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JAPANESE PRISON LABOR PRACTICES

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Y 4. F 76/1: J 27/13

Japanese Prison Labor Practices, 10...

JOINT HEARING  
BEFORE THE  
SUBCOMMITTEES ON  
INTERNATIONAL SECURITY, INTERNATIONAL  
ORGANIZATIONS AND HUMAN RIGHTS  
AND  
ASIA AND THE PACIFIC  
OF THE  
COMMITTEE ON FOREIGN AFFAIRS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRD CONGRESS  
SECOND SESSION

JUNE 10, 1994

Printed for the use of the Committee on Foreign Affairs



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# JAPANESE PRISON LABOR PRACTICES

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FRIDAY, JUNE 10, 1994

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON FOREIGN AFFAIRS,  
SUBCOMMITTEE ON INTERNATIONAL SECURITY, INTERNATIONAL ORGANIZATIONS AND HUMAN RIGHTS, AND  
THE SUBCOMMITTEE ON ASIA AND THE PACIFIC,

*Washington, DC.*

The subcommittee met, pursuant to call, at 10:30 a.m. in room 2172, Rayburn House Office Building, Hon. Gary L. Ackerman (chairman of the subcommittee on Asia and the Pacific) presiding.

Mr. ACKERMAN. Good morning. The subcommittees will come to order. The Subcommittee on Asia and the Pacific and the Subcommittee on International Security, International Organizations and Human Rights meet today in open session to discuss a very serious matter.

Let me say for the record there is no one in this Congress who places greater value on U.S.-Japanese relations. Indeed, the U.S.-Japan bilateral relationship is one of the most important bilateral relationships anywhere in the world.

It is for this reason that I was so terribly disheartened a week or so ago when Mr. Christopher Lavinger, who had been my constituent, came to my New York office and detailed his history of being forced, along with approximately 35,000 other prisoners, to produce commercial goods while incarcerated in Japanese prisons. These prisoners are forced to work for as little as 3 cents per hour, slave wages, 8½ hours per day, 5½ days per week producing commercial goods bearing the names of such prestigious, internationally recognized Japanese companies and Japanese subsidiaries of international companies such as Burberry's, Sega, Mizuno, as well as, Mitsukoshi and Daimaru, two of Japan's largest department stores.

In a letter to Ambassador Takakazuk Kuriyama, I have demanded to know how widespread this practice is, how much has been for export, which companies have been participating in this, and the full and complete details of this program. When I spoke with the Ambassador yesterday, he informed me that he believes this practice is not against international or domestic Japanese law. He also informed me that these products are, indeed, exported in some cases out of Japan, but that the companies are told not to ship them to the United States because of our prohibition concerning prison labor. There is evidently from what we can gather at this point no enforcement mechanism.

It is my firm opinion that not only is this practice morally reprehensible, but also in direct contravention of international agreements to which Japan and most other industrialized and civilized nations have signed.

Forced labor such as this violates the general conference of the International Labor Organizations Convention 29, which was ratified by Japan on November 21, 1932. Quoting from Article 2, paragraph 2 of that convention: "For the purposes of this convention, the term, 'forced or compulsory labor' shall not include any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies, or associations." That is a direct quote.

For years, China's prison labor—that is China's prison labor practices, have been a thorn in the side of Sino-U.S. relations. We have castigated China for this despicable practice. Astonishingly, now we find out that it is being done by Japan, one of our most important allies.

Using forced prison labor to produce commercial products is nothing short of an outrage. Using such products for export further complicates the outrage.

It is bad enough when governments use hidden subsidies to support domestic production. If, indeed, they do it in part with slave labor, it is not only morally reprehensible, but a hoax upon the free market concept. This egregious concept must stop.

Testifying before the subcommittees today will be Mr. Christopher "Kip" Lavinger, a former inmate of Fuchu Prison; Mr. Michael Griffith, Attorney; Mr. Richard Atkins, President of the Criminal Law, Committee of the International Bar Association; Mr. Hideyuki Kayanuma, a Japanese civil rights law expert; Mark Kurzmamm, Attorney; and the second panel, Mr. Thomas Hubbard, Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs of the Department of State.

Now, for a statement by the co-chairman of this hearing and the Chairman of the Subcommittee on Human Rights and International Organizations, Chairman Tom Lantos.

Mr. LANTOS. Well, thank you very much, Mr. Chairman and let me first commend you for bringing this matter to the attention of Congress. My interest in this issue is clear as Chairman of the subcommittee with responsibility over human rights. I am profoundly concerned both with possible human rights violations and we will hear in detail whether, in fact, there have been human rights violations in the treatment of prisoners, and secondarily, with the allegation that products which are the result of work by prison inmates may have been exported and may have been exported to the United States.

This will be a matter of utmost concern not only to us on the Foreign Affairs Committee, but to the Congress and to the administration.

I think it is extremely important that our Democratic friends and allies and trading partners live up to the highest standards of human rights and obey all laws in terms of exporting to the United

States. And prison labor is specifically excluded as an exportable item to the United States.

I look forward to the testimony of our witnesses.

Mr. ACKERMAN. Thank you very much, Mr. Chairman. Will the panel please stand and raise your right hands.

[Witnesses sworn.]

Mr. ACKERMAN. Thank you very much and welcome to our subcommittees. Settle in and be comfortable. We are first going to hear from Mr. Christopher "Kip" Lavinger, who will be the lead witness at today's hearing. Kip.

### STATEMENT OF CHRISTOPHER LAVINGER

Mr. LAVINGER. Thank you, Mr. Chairman. Mr. Chairman, members of the Committee on Foreign Affairs, members of the Subcommittee on Asia and the Pacific, ladies and gentlemen, my name is Christopher David Lavinger. I am 28 years old. I am a citizen of the United States of America.

On November 11, 1991. I was arrested in Osaka, Japan, for possession of small amounts of narcotics. On that date, I was taken to the Osaka Water Police Station, where I was interrogated for 14 hours a day, 7 days a week for 35 straight days.

While being interrogated, the Japanese officials questioning me told me that the embassy did not want to come and see me because they did not have the time. Eventually, I was indicted and on December 18, 1991, I was transferred from Osaka Water Police custody to the Osaka House of Detention, which is a prefectural, pre-trial detention facility.

After 2½ months in solitary confinement, I had my first hour of my trial. The date was January 22, 1992. Court sessions are granted in 1-hour blocks usually 2 to 4 weeks apart. I should note that many in Japan wait considerable periods for their trials. The trial of one inmate with whom I spoke took 5 years. My remaining two sessions and sentencing concluded on February 26, 1992.

On that date, the prosecutor recommended that the court place me in a forced labor prison for 42 months. The court sentenced me to serve 22 months at Japan's forced labor facility for foreigners, Fuchu Prison in Tokyo.

I was given 2 weeks in which to decide whether to appeal my sentence. The penalty for appealing one's conviction and/or sentence is that the time served until the appeal is decided will not be applied to—toward any eventual sentence. Appeals take months to be heard and can take years to be decided.

My sentence officially began on March 12, 1992.

On March 18, 1992, I was moved from the preconvicted wing at Osaka House of Detention to the convicted wing. Since there was no available cell at Fuchu Prison, I would begin serving my sentence at the Osaka House of Detention while I waited for transfer, in a—

Mr. ACKERMAN. Could you pull the microphone a little bit closer to you? Speak a little bit more slowly.

Mr. LAVINGER. Sorry. On March 18, 1992, I was moved from the preconvicted wing at Osaka House of Detention to the convicted wing. Since there was no available cell at Fuchu Prison, I would begin serving my sentence at the Osaka House of Detention.

While I waited for transfer in a solitary confinement cell, I was forced to produce clothes pins. This was the first time I was forced to produce goods for the Japanese——

Mr. ACKERMAN. I am sorry, what was it you were forced to produce?

Mr. LAVINGER. Clothes pins.

Mr. ACKERMAN. Clothes pins.

Mr. LAVINGER. During my 1-month stay in this convicted wing, I made 78,500 clothes pins. It has come to my attention that it is probably unlikely that an advanced society such as Japan would need clothes pins in the numbers being produced and it may be, therefore, that I was making goods for export. I do not know for sure.

On April 16, 1992, I was sent to Fuchu Prison outside of Tokyo. At about this time, I was supplied with a booklet, written by the U.S. Mission to Japan and given to me by the U.S. Embassy in Tokyo. The booklet was titled, "Guidelines for Americans Arrested in Japan."

According to this booklet, "all foreign men convicted in Japan serve their sentences at Fuchu Prison." The Japanese prisoners at Fuchu Prison are all offenders that remain 26 years of age or over with prison terms of less than 8 years, who have past prison records, lack the desire for rehabilitation, and are difficult to treat. Many of the Japanese inmates are members of criminal organizations, substance abusers or vagrants. They are all repeat offenders.

The booklet explains that it was obligatory to perform, "assembly work for outside contractors," and that "the income received by the prison for the sale of goods produced by the inmates is treated as government revenue."

I was incarcerated in Fuchu Prison with approximately 14 other Americans, as well as citizens of Great Britain, France, Australia, Israel, Belgium, Norway, Austria, Canada, Spain, China, Malaysia, Thailand, Colombia, Peru, Pakistan, India, Bangladesh, Vietnam, Nigeria, Iran, and Brazil, among others. In all, over 30 countries were represented, bringing the foreign population at Fuchu Prison to nearly 250 inmates.

There were also Koreans, probably a significant number, incarcerated in a different facility. I believe their segregation from all prisoners to be due to the deep-rooted hostility between the two nations.

Initially, I was placed in a solitary confinement cell block at Fuchu where I was to work making high-quality paper shopping bags. These bags had logos and designs of private companies, including Burberry's of London, Mizuno Sporting Goods, Daimaru Department Stores, and Mitsukoshi Department Stores, among numerous others.

I was held in the solitary confinement wing/paper bag factory for approximately one month.

Following this one month in the paper bag factory, I was transferred to another solitary cell. From that cell I was taken out each day to work in an outside factory, training factory number 24. In lectures——

Mr. ACKERMAN. I am sorry. When you say an outside factory, that is a factory off of the prison grounds?

Mr. LAVINGER. No, this is a factory on the prison grounds that was the first factory where you would be taken once you were let out of the solitary.

Mr. ACKERMAN. That was part of the prison. A prison zone facility.

Mr. LAVINGER. Correct.

Mr. LAVINGER. In lectures conducted by high-ranking prison officials in this factory, it was explained that it was mandatory that I, and my fellow 2,500 prisoners, work in the 24 factories dedicated to the production of goods for private commercial companies. I was told further that the Japanese Government had contracted out the prisoners' labor and that I would be put to work in one of the 24 factories.

The factory produced, among other things, items such as toys, ladies' shoes and hand bags, electronic parts, smoke detectors, pottery and ceramics, umbrellas and heavy construction equipment. It was during these lectures that I was taught how to walk and military march correctly, how to speak, eat, sit, sleep, and how to beg for forgiveness.

Under the threat of the cruel physical and mental punishment, I was compelled to produce goods for many private companies, including Sega Electronics, Burberry's of London, Mizuno Supporting Goods, Mitsukoshi Department Stores, Daimaru Department Stores, and Walther Firearms.

Mr. ACKERMAN. That was firearms, you say?

Mr. LAVINGER. I didn't. I will get to that shortly.

I was told that if I did not fulfill my obligation to perform the required labor for these companies, I would be subjected to physical beatings, incarceration in a punishment room called a chobatsu cell for a minimum of 7 days, loss of good time, reduction of my daily food rations, loss of privileges, such as using the toilet, moving my body, reading, receiving and writing letters and physical exercise. Failure to comply with nearly every rule, major or minor, was considered intentionally removing oneself from work, work which the prisoner owes to the Japanese Government.

The chobatsu cell has dimensions approximately three-quarters the size of a telephone booth. It consists of a hard wooden box on which the prisoners—on which the prisoner must sit at attention, ankles and knees together, back arched, elbows in, palms flat on lap, staring straight ahead at a white wall motionless from 6:55 a.m. until 6 p.m.

During this time a prisoner may not get out of this position for any reason. A bell sounds only twice during this interval to allow the prisoner to use the toilet. Any violation of chobatsu rules result in additional weeks in the punishment cell. All exercise is strictly prohibited in the chobatsu cell. Any refusal or further noncompliance with chobatsu rules will result in the use of the harness.

The harness is a belt that straps around the waste and binds the left wrist in toward the stomach and the right wrist around the back and in toward the spine. A prisoner must eat, sleep, and use the toilet while bound in this harness. I personally witnessed several severely scarred and malnourished prisoners, victims of the harness for consecutive periods ranging from weeks to months. Many prisoners placed in the harness would simply disappear.

All chobatsu cells are in the solitary wing of Building 4 of Fuchu Prison. I was transferred from factory number 24 to factory number five also on the prison grounds. I was immediately taught how to make electronic and other internal components for toys, games, and small electronic devices.

Among the numerous products I was forced to make were: One, children's ski poles and skis for a product called Super Ski. Later, I was told to affix American flag stickers to the poles. In 3 months, I made 120,000 ski poles alone. Significantly, this product was labeled in English. Goods in Japanese stores are nearly always labeled in Japanese, indicating that these goods marked in English were likely bound for foreign markets.

I assembled thousands of Pachinko, which are Japanese pinball machines. I produced thousands of tiny—of toy golf sets called Super Mini-Golf. I clipped hundreds of thousands of tiny plastic toy and game parts from sheets on which they had been molded. I have no idea what these parts were, but as I said, they appeared to be toy parts.

I assembled tens of thousands of electrical contact switches for toys. I made thousands of Walther P-38s water guns during the summer months. Ironically, in this case I was not even allowed to have a drink of water in the 90-degree Japanese summer heat while making these water guns. I used a special tool to bend hundreds of thousands of tiny copper parts for future use. I do not know what these were. I assembled thousands of Godzilla and Mothra mini-pinball machines. I assembled thousands of mini-slot machines. I assembled thousands of whiffle ball bats and sets.

Upon finishing my specific task, I passed these products on to other prisoners for completion. Upon their completion, I observed these other prisoners packaging these products into cardboard boxes for store displays and then in turn into larger boxes for shipping. These boxes were stacked in a transit area of my factory for shipment outside the prison. I regularly saw boxes in my factory filled with raw materials and labeled "Made in China" and "Made in Taiwan." The finished products would then be shipped in boxes labeled "Made in Japan" or mislabeled "Made in China" or "Made in Taiwan." Furthermore, there were hundreds of boxes which bore the logo of Sega Electronics.

At other times, I would take raw materials from the Chinese or Taiwanese boxes, enhance them, and then pass them on to other prisoners to be packaged in boxes labeled, "Made in Japan," "Made in China" or "Made in Taiwan." Every day there were quality control experts that would come and tour the factories and supervise the production of goods. These quality control experts were not guards. They had no handcuffs or billy clubs. They wore all civilian clothing a special hats which distinguished them from the prisoners.

Prisoners wore ripped, dirty gray uniforms. The conditions under which I was forced to work were inhumane, threatening and cruel. I was a slave of the Japanese Government under the control of guards with nearly unlimited authority to punish actual or fabricated breaches of the rules. I was remunerated approximately 3 cents per hour for having worked 8½ hours per day, 5½ days per week.

Basic necessities would be purchased from the prison supply, but the wages were usually insufficient to do so: I lived in continual fear of punishment as the guards threatened me and on occasion I observed the guards beating prisoners. When these beatings occurred, all prisoners were forced to either *migi mukai* *migi* or *hidari mukai* *hidari*, right face or left face respectively, meaning turning away from the beating and then to *mega shiro*, close eyes, so as not to witness the beating that takes place, frequently with electrified, extended metal poles.

From July 7, 1992, until July 13, 1992 I served a sentence of 7 days in a chobatsu punishment cell for the offense of giving my telephone number to an American that was being released. I asked the American to call my family and tell them what it was really like in the prison; that I was doing all right and that I loved them. This was an offense punishable by chobatsu.

Halfway through my chobatsu, I was given a large, two-sided piece of paper and told to fill it with a written explanation of why what I did was wrong. If I did not write the self-accusatory essay, I would not be considered for release from the chobatsu cell. I wrote it.

While I served my chobatsu punishment from July 7, 1992, until July 13, 1992, the temperature outside and inside was near 90 degrees Fahrenheit. I was forced to sit at attention, ankles and knees together, back arched, elbows in, palms flat on lap, staring straight ahead at a white wall motionless on the wooden box for 11 hours a day. I had to wear full cold-weather clothing, including long-john underwear on top and bottom, three-quarter long johns over the full length, long johns, a T-shirt, underwear, socks, long pants, a long-sleeve, button-down shirt, completely buttoned up to the neck and arms, an acrylic vest and a long-sleeve jacket, also buttoned completely up to the top.

During this punishment in chobatsu the prison authorities also decreased my daily food ration.

I was released 1 day early from chobatsu for good behavior. Upon release from the chobatsu cell, I was taken to a doctor who asked if there was anything wrong with me. I told the doctor that my back was black and blue from the back rest, which does not allow any type of rest on the back of the wooden box which dug into my lower spine and back. I also told him that there was a terrible swelling in my left ankle which was black and blue.

The doctor, without even looking up at me, told the guard escorting me to get me back to my factory so I could go back to work.

Notably, requests for medical care of any kind were ignored or punished. From simple requests for aspirin, for dental care for cavities, even for treatment of cancer. On one occasion, a Norwegian was injured by a hanger that ripped his nose open. I was standing next to him when this happened and notified the guard immediately. The guard ignored the injury and ordered us both to line up, refusing to allow treatment.

The Norwegian soon collapsed and went into a seizure in the line-up. He was taken away and forced to sign a voluntary confession accepting responsibility for the incident.

On one occasion, early in my incarceration, I wrote to the U.S. consul asking that a severely painful cavity be treated—

Mr. ACKERMAN. Who did you tell?

Mr. LAVINGER. Stephen Anthony Edson of the U.S. Embassy in Tokyo.

I wrote to the U.S. consul, Stephen Anthony Edson, asking that a severely painful cavity be treated, complaining that a guard was feeling me up when he frisked me and that I frequently encountered prison guards who were aware that I was Jewish and would regularly salute me with Nazi salutes saying, "Heil Hitler." I was also subjected to having swastikas and Jewish stars drawn on my shampoo bottle. Shampoo was a luxury which I was afforded only after 8 months of incarceration.

In the vast scheme of things, however, this was a minor problem. In response to the letter, I was brought to interrogation and asked to rip up the letter voluntarily, and sign a statement saying that I ripped up the letter of my own free will. My other option was to send the letter, but if I did, I was told I would get no parole. I was, for all practical purposes, not allowed to communicate freely with my own embassy.

One of the more egregious religious violations, though, was of a rastafarian, who refused to have his hair cut because it is contrary to his religion. He was put in a solitary cell to serve out his entire 3-year sentence with no parole.

Personal tragedies could result in punishment as well. The mother of a British citizen died while her son was in Fuchu Prison. His crying resulted in interrogation and chobatsu. When he was found crying again he was placed on Thorazine, chlorpromazine, a very strong tranquilizer, used to control psychotic behavior and generally reserved for in-patient psychiatric treatment. When found crying thereafter, he was subjected to further punishment, more chobatsu. This incident was of particular concern to me as my mother was for the entire time of my incarceration dying of Stage III-Stage IV metastatic cancer spread throughout her abdomen and chest. In the summer of 1991, she was given 3 to 6 months to live by her doctors.

There were many times, I believed that my mother had died, but that my family did not tell me out of concern for my well-being. Through some miracle, my mother survived to see me return, though she died soon after I was released.

During my entire 16 months of incarceration, I was kept in solitary isolation and subjected to 24-hour light. I was taken out of solitary only to work in a factory. I was not permitted to talk or even look at another prisoner while at work except for about 10 minutes per day.

Guards would walk up and down the aisles of work tables and watch for any movement of heads or any talking for which they could send a prisoner to punishment.

The first Monday of each new month was called Green Cross Day. On this day, it was forbidden to accidentally injure yourself at work or in the cell. Accidental injuries were on a regular basis investigated and frequently punished with chobatsu.

On Green Cross Day, an accidental injury would earn chobatsu punish without the opportunity of interrogation. Again, it is standard that interrogations continue until a confession is achieved. In-



terrogations can last for months even for the most minor of infractions.

If I have not clearly stated this yet, I will do so now: If not for the threats of punishment, solitary confinement, and other arbitrarily imposed retribution for real or imagined infractions, I most certainly would not have agreed to perform the labor that I have described. The conditions under which I was forced to work made the experience exponentially worse.

Since my release, I have had flashbacks which at times have been very severe. I have had difficulty sleeping and have horrible nightmares when I finally do sleep. I have trouble talking to people and prefer to be left completely alone. I have feelings of worthlessness which I attribute directly to the treatment I received in Fuchu Prison.

I have also had difficulty finding work, a problem I never had before this experience in Japan. I have also had severe financial problems related to my inability to find work. Recently, though, I have been able to secure a position in which I hope to make a career.

In many respects, this statement is too brief to convey my experience and I look forward to answering any questions you might have. Thank you.

[The prepared statement of Mr. Lavinger appears in the appendix.]

Mr. ACKERMAN. Thank you very much for your statement, Mr. Lavinger. We appreciate how difficult it is to do these things sometimes. I know that, believe it or not, you have a more extensive statement in writing and without objection, the entire statement will be placed in the record, as will the entire statements of the other witnesses be placed in the record without objection. And just to cause relief, the other statements indeed are much briefer.

We will next hear from Michael Griffith, attorney for Mr. Lavinger.

#### **STATEMENT OF MICHAEL J. GRIFFITH, ATTORNEY, INTERNATIONAL LEGAL DEFENSE COUNCIL**

Mr. GRIFFITH. Mr. Chairman, members of the committee, I am a founding partner of the International Legal Defense Council Law Firm with offices in Southampton, New York, and Philadelphia, Pennsylvania. For the last 20 years I have been representing Americans and foreign citizens of approximately 25 countries who have been arrested for various reasons.

Perhaps my most renown client is William Hayes, Jr., the subject of Oliver Stone's Academy Award Winning movie, *Midnight Express*. Billy and I were both characters in the accompanying book, which related the experiences of an American in a Turkish jail. My negotiations with the State Department and the Turkish Government helped originate the concept of the bilateral transfer of prisoners, which is now commonplace among many countries of the world.

I later testified before Senator Biden's Committee on Penitentiaries and Corrections, which led to the promulgation of transfer treaties between the United States, Mexico and Canada in 1977. I am presently a member of the Criminal Law Committee of the

International Bar Association and my partner, Richard Atkins, is the Chairman of that committee.

May this letter serve as notice to bring to your attention a situation presently existing in Japan that you and your fellow Americans will find abhorrent.

At the present time, Japan as was the case in Communist China, is presently involved in prison labor. Not only is this offensive practice being promulgated by and for the Japanese Government, but in addition, the forced labor of the prisoners involved is being used for the making of products for private commercial companies.

Further and even more shocking is the fact that American citizens, in addition to those of many other countries, are compelled to make these products under the most severe and inhumane conditions imaginable. My investigation has concluded that at the minimum three prisons under the control of the Japanese prison authorities are presently involved in this activity. These are as follows: The Osaka House of Detention, Seiba Prison, and Fuchu Prison, which is outside of Tokyo.

Specifically, Fuchu is the prison where most Americans who have allegedly committed crimes in Japan are incarcerated. Approximately 12 to 15 Americans are presently incarcerated in the aforementioned prisons, in addition to 2,500 Japanese prisoners.

Although I have no firsthand evidence, it is my belief that a significant amount of Japanese prisoners within the full Japanese prison system may very well be involved in forced or compulsory labor for the benefit of private commercial contractors or companies.

The 2,500 prisoners at Fuchu are divided into work groups manning approximately 24 factories where such items as electronic parts, toys, games, smoke detectors, bags among other products are both manufactured and fabricated. It is my understanding that the Japanese Government has contracted the services of these prisoners to a number of Japanese and multinational companies.

The inmates are expected to work 8½ hours a day, 5½ days a week. There is absolutely no talking permitted during the period and prisoners are not permitted to raise their heads while at their workstations. Quality control personnel are stationed throughout the factories to instruct and inspect the goods produced therein.

These individuals wear different color uniforms other than prison guards and bimonthly executives in suits come to the factories to oversee the performance of the inmates and the quantity and the quality of their labor.

Although I have no firsthand evidence that any of these products have been exported to the United States, there does seem to be some telltale signs that the items may not be just for domestic consumption. Specifically, products had the label affixed, "Made in Japan" in English.

One children's toy ski pole set made of plastic skis, in addition to the "Made in Japan" label also included American flags affixed thereto by the American prisoners. The ski set was entitled Super Ski and approximately 80 to 90,000 were produced by my client, and relative, Christopher Lavinger alone. Taking into account that other prisoners were producing the same amount over the course

of a few months, it seems obvious that the Japanese domestic market could not absorb such a large number of this type of item.

Similarly, Mr. Lavinger, along with Charles Cashdollar, another American client of mine, were forced to fabricate high quality shopping bags with the Burberry name and logo. Although the attorneys for Burberry have denied being involved in this practice, it seems unlikely that the Japanese Government would contract with a counterfeiter for the making of illegal shopping bags bearing the name Burberry.

My clients were producing almost 2,500 of these bags a day, not including the total for prisoners assigned to the same task. With limited locations in Japan, it would seem that these items would be earmarked for Burberry's foreign locations if, in fact, they are themselves are involved or through a subcontractor. However, when my clients offered Burberry's the opportunity to conduct an impartial investigation by a respected international security firm, they, in fact, refused to share the cost of the investigation.

My clients have further alleged that products are being produced in Fuchu Prison for Mitsukoshi and Daimaru, two of Japan's largest department stores. Mizuno, a well-known Japanese sports and sportswear firm, who has an international reputation, who has also been allegedly reported as having bags produced with their name and logo inscribed upon, as stated to me by my clients in sworn affidavits.

Likewise, Sega, a large Japanese company, has had products manufactured in Fuchu by Mr. Lavinger and Cashdollar. On behalf of my clients, I contacted all the above firms and demanded that they cease and desist in using prison labor, in addition to asking that proper compensation be paid to them.

Only Sega complied when its general counsel, Thomas Klitgaard of Sega USA came to Southampton, New York, to confer with me and my clients, in addition to going to Japan to see that the practice was discontinued and safeguards put in place to ensure that it would not happen again. In fact, he even apologized to my clients. Although, Sega has not compensated Christopher and Charles for the indentured servitude in which they were kept, I am satisfied that they have terminated this practice as it was discovered that a subcontractor was responsible for contracting prison labor.

I am advised that prison labor as described above is mandated for either all or most of the prisoners incarcerated in Fuchu and the other named prisons. Failure to partake in this involuntary practice will result in the prisoner being thrown into a chobatsu punishment cell, wherein he is manacled in grotesque positions with his hands behind his back. He is forced to eat off the floor and defecate in his uniform during the pendency of his stay which often lasts a week.

To document these allegations, I have included an addendum, illustrations from a little known paperback written by a former Japanese prisoner from Fuchu showing pictures of the prison factory, the assembly line, company cars, trucks and the punishment cells and techniques. The title in Japanese is Fuchu Diary Illustrated, of which I am presently holding a copy.

Almost as distressing is the fact that the U.S. Embassy in Tokyo has not only known about the aforementioned prison labor involv-

ing private and public commercial companies for years, but in fact has approved of this treatment of Americans by issuing directives to prison-bound Americans indicating that they will be expected to perform this type of labor activity described above.

I am equally shocked that this conduct by the Japanese Government is not only tolerated by our embassy, but there has been no diplomatic protest that I am aware of.

For your interest, prison labor for commercial companies is permitted in the U.S. Federal prison system, but only under the following restrictions. First, it must be voluntary; second, the minimum wage for that locality must be paid for similar labor, and last, unions must be consulted. These indicia are clearly set forth in Title 18, Section 4082 of the U.S. Code. In addition, Congress in the Tariff Act of 1930 prohibited goods from being produced by prison labor to be imported into the United States and in furtherance of this principle, a sense of Congress was taken that deplored the manufacture of goods by slave labor in the Soviet Union. This is attached to my commentary.

Similarly, Title 18, Section 1584, specifically, prohibits persons being held in indentured servitude and Title 18, Section 1581, likewise, outlaws peonage and slavery. As cited above, not only is Japan in violation of the rights of American citizens as codified under U.S. law, but they have also violated Convention 29 of the General Conference of the International Labor Organization, an agency of the United Nations, prohibiting forced or compulsory labor.

As a signatory to this convention, in 1932, Japan has violated its pledge to abolish this offensive practice. By gearing their prison system to compel prisoners to make products for commercial companies as outlawed by the above convention, Japan is likewise in contravention of the Universal Declaration of Human Rights.

Adopted by the United Nations in 1948, it specifically incorporates the ILO provisions of Convention 29 regarding the suppression of forced and compulsory labor which has been ratified by 129 countries. And as Casey Stengel once said, you can look it up.

I have personally asked legal representatives from the above-cited commercial companies to refrain from participating in any contractual relationship with the Japanese Government that would permit them from benefiting in prison labor. I have also asked that the Japanese-based firms and Burberry's to compensate my clients for the work performed while participating in alleged production of these products.

None of the firms have either agreed to compensate the prisoners, who are paid a minimum of 3 cents per hour for at least the U.S. or Japanese minimum wage, nor except for Sega have any of firms agreed to stop participation in this disgraceful practice.

Similarly, the legal representative of the Japanese Embassy in Washington, DC., Tatsuya Sakuma, advised me that his Minister of Justice sees nothing inappropriate with this even though the United States and the Community of Nations have been strictly opposed to the prison labor—to the prison labor policies of Communist China.

It is ironic that Japan has been secretly involved in the same practices for an undetermined amount of time and has now only

been exposed. In fact, my clients have observed Chinese boxed products coming into Fuchu, which were enhanced and were then repackaged in Japanese marked boxes.

The forced labor practices of the Japanese are far more reprehensible than those of the Chinese, as the Japanese have exacerbated the situation by not only using private commercial companies, but they are also using American prisoners and prisoners from other countries under duress and by threat of torture.

In consideration of the events and situation that I have described above, I respectfully ask that the following steps be taken to immediately bring to a halt the imposition of prison labor in Japan.

One, that the President of the United States of America invoke Title 22, Section 1732 of the U.S. Code, finding that American citizens are being wrongfully held and in violation of their rights of American citizenship.

Further, I have a copy of that section which I testified before Senator Biden's committee back in 1977 when we had American prisoners in Mexican prisons who were treated wrongfully. In fact, our committee was called the 1732 committee of which Congressman Pete Stark was a champion, and may I say to you, Congressman, 1732 says whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizenship and do any acts not amounting to war, and to paraphrase and to communicate to Congress as soon as practicable.

Further, that there being compelled to participate in forced labor is in the nature of indentured servitude, a violation of Title 18, Section 1584 of the U.S. Code and they should be immediately transferred out of prison labor to more generally acceptable prison facilities.

Number two, that the President and the Secretary of State express in the strongest possible terms to the Japanese Government that this practice be terminated immediately or at the very least make it voluntary for any prisoners willing to participate and to compensate them at the minimum wage or more for similar labor in Japan.

Third, that governments whose citizens are similarly situated protest these practices to the Government of Japan and demand an immediate cessation to this practice.

And fourth, that Japan got—this in the event the Japanese do terminate prison labor, the President should recommend to Congress sanctions including the cessation of the present trade negotiations that are conducted between the United States and Japan.

In conclusion, I hope that reporting to you of the situation involving prison labor in Japan will be helpful in doing everything within your power and that of the United States to put an end to this internationally condemned practice.

I and my clients will be seeking public, private and/or governmental support to continue our investigative and legal efforts to not only stop the aforesaid practice and to free all participating

prisoners, but to also determine whether any of these goods have been exported to the United States or other countries. Thank you kindly.

Mr. ACKERMAN. Thank you very much for your statement. Let me strongly request of the remaining witnesses that you keep your statements as brief as possible so that we might proceed in an appropriate fashion. Let me also state that we are at present, based on this testimony, slipping into, if we have not already done so, joint jurisdiction with the Subcommittee on Trade, and that the additional proceedings and hearings and investigations into this area, I believe, should and will be done jointly together with the Subcommittee on Asia and the Pacific, the Subcommittee on International Security, International Organizations and Human Rights and the Subcommittee on Trade as well. That being said, we will hear next from Mr. Atkins.

#### **STATEMENT OF RICHARD ATKINS, CHAIRMAN, CRIMINAL LAW COMMITTEE, INTERNATIONAL BAR ASSOCIATION**

Mr. ATKINS. Thank you, Mr. Chairman.

My name is Richard Atkins. I am an attorney and founding member of the International Legal Defense Council, which is a firm based in Philadelphia, and for about 15 years we have been in the forefront of the promulgation and the use of prisoner transfer treaties.

I might suggest, while this is part of my own introduction, that if in fact there would be a prisoner transfer treaty in effect between the United States and Japan, most of these, if not all the problems we are talking about today, could be and would be avoided. And that does not even require a bilateral treaty. It only requires accession by Japan to the Council of Europe Prisoner Transfer Treaties, whereby all the European countries, Canada and the United States could then participate. And American prisoners could come back here to serve out their terms, and Japanese could go back there to Japan and serve out their terms, and we would not have to discuss this at all.

Mr. GILMAN. Would the gentleman yield, Mr. Chairman, with your permission?

That does not take care of the problem of slave labor, which is a major problem. And it may take care of the problem that you are talking about momentarily, but it certainly does not take care of the slave labor problem.

Mr. ATKINS. Yes.

We have written numerous booklets and are involved in the forefront of prison issues involving Americans in foreign countries. I am also the Chairman of the Criminal Law Committee of the International Bar Association. That group is headquartered in London, England, and we provide and put on international criminal law seminars, and we also provide assistance to emerging bar associations in developing countries, and we provide input into international criminal policymaking organizations, including the U.N.

I might also add that I am sending the information concerning this practice in Japan to my committee members so that each of them in any of the affected countries can inform their governments

that citizens of those countries are being held under these circumstances in Japan.

In regard to the U.N., I have participated in criminal justice prison projects at the U.N. with the NGO—that is the Non Governmental Organization—Alliance on Criminal Justice and Crime Prevention. And I am presently—we are part of a very small four-person working party at the Alliance, and we are preparing updated minimum standards for the treatment of foreign nationals who are incarcerated in prisons worldwide so that we can, most likely, address this specific problem.

I am involved in writing part of the manual on prison transfer, and all of this will be submitted and presented at the U.N. Crime Prevention and Criminal Justice Congress in Tunisia next April.

I am also a member of the American Correctional Association and their International Relations Committee and in charge of the Prisoner Transfer Committee, and in that relation and on their behalf I have testified before various committees, including the Senate Foreign Relation Committee, on issues relating to Americans incarcerated abroad.

I was going to talk about the Declaration of Human Rights Convention, but that was discussed by Mr. Griffith, so I will go on from there.

We have known about the long-standing problem with China involving Chinese prison labor and their export to the United States, but I do not know of any reporting instances of Chinese forcing foreign nationals, including U.S. citizens, to perform slave labor. I am saying I because this was set up so quickly that I did not have the opportunity to check with any of the organizations or agencies with which I work, so I am speaking directly for myself.

We realize that it is difficult for many Asian and Pacific countries with different economies and different social structures than ours or Europe to make quick improvements toward human rights, including prison conditions, including the work situation in prison. But this is particularly true concerning emerging nations.

However, Japan is one of the most developed of all nations, a leading industrial nation and the largest exporter of goods to the U.S. Japan, unlike China, does not have any arguable need to rely on prison labor to help its economy.

While the amount of exports made by foreign prisoners there is not fully known, it should not exist at all, and we cannot think of any legitimate reason for Japan to use foreign prison labor to produce goods which are exported to other countries, and we hope that the United States and other affected nations consider the ramifications of this policy and do everything possible to convince the Japanese Government to eradicate this process and that situation as quickly as possible.

On April 25 of this year, the U.S. Labor Secretary Robert Reich suggested that all countries in the world should follow core labor practices and standards such as renouncing prison labor; stating, "some labor practices simply place countries outside the community of civilized nations." This practice involving Japan was most likely unknown to Secretary Reich in April, and most probably it would have been specifically denounced by him.

There were several other laws of the United States that Mr. Griffith referred to, and it is clearly illegal—I will just mention this briefly—for anyone to knowingly transport from any foreign country or in interstate commerce any goods manufactured or produced by prisoners, and that provides for a 2-year maximum imprisonment and \$50,000 fine.

Now, I think it is important to understand what the situation is in the United States for comparison purposes. Most correctional facilities in the United States housing long-term offenders have work programs. The basic work program is that which involves the maintaining of the facility, the food service, the laundry. For this type of work the inmates are to receive some but often very little monetary compensation.

The next level of work is the traditional prison industries program, whereby the inmates produce goods that are used in intrastate commerce only. The sales are clearly restricted to government agencies, municipalities and various tax-exempt and educational systems and, of course, the Department of Corrections, which is often or usually the major purchaser of the goods. These goods generally include clothing, bedding, shoes, furniture and, of course, the traditional product, license plates.

There are several other laws that restrict prison-made goods. The Summers-Ashurst Act, which I refer to in my paper, and the Walsh-Healey Act are two of them.

The final level, the most sophisticated level of prison industry program, is the P.I.E., the Prison Industry Enhancement Program. That program was mentioned by Mr. Griffith. I want to add that it is operated under strict controls. It was worked out in a bipartisan fashion. The prison industry program, this particular one, requires payment of the prevailing wages in the community to the prisoner and requires mandatory deductions for Federal taxes, State taxes.

Mr. ACKERMAN. I'm sorry, you say payment to the prisoner or the prison?

Mr. ATKINS. To the prisoner.

Mr. ACKERMAN. Prisoner.

Mr. ATKINS. Yes, sir.

Mr. ACKERMAN. Thank you.

Mr. ATKINS. This is the special P.I.E. program. Payment of prevailing wages in the community, that deducts State and Federal taxes, social security, then a reasonable deduction for room and board and then a mandatory contribution to a Victims Compensation Fund—between 5 and 20 percent of the gross wages—to give back money to victims of crimes who—not particularly the crime of that individual but anyone who was not compensated and who suffered a loss as a result.

So that is part of this program. And then there are mandatory savings with the remaining amount, and the savings usually involve money being sent to support the family, hopefully to keep some families off of welfare.

The total deductions cannot be more than 80 percent of the gross wages. So, in the United States, with this very carefully monitored program, only when the prison meets the strictest requirements, pays the full wage, makes all the deductions can prison industries



sell some products in intrastate commerce and interstate commerce and to the Federal Governments. And, most importantly, this is all done voluntarily. No one is forced into it.

Our rules and our laws are very strict concerning prison labor, and they are often used as part of the rehabilitation process, and the opportunity to work at the limited number of jobs is usually sought after by the individual prisoner. The circumstances are considerably different than in the Japanese prison system.

I present a few of the issues involved with this complex issue. One thing is clear and that is that the Japanese prison practice is in violation of our laws, is economically unfair and is in violation of accepted human rights standards. Thank you.

Mr. ACKERMAN. Thank you very much, Mr. Atkins.

[The prepared statement of Mr. Atkins appears in the appendix.]

Mr. ACKERMAN. Mr. Kurzmann.

### STATEMENT OF MARK J. KURZMANN, ATTORNEY

Mr. KURZMANN. Good morning, Mr. Chairman, members of the committee.

My name is Mark J. Kurzmann. I am a former Department of Justice trial attorney, now in private practice in New York City and in Rockland County, New York. My task is to address briefly some of the legal and diplomatic issues implicated by the shocking events we have heard about this morning.

I hope that I will be able to contribute some insight as an attorney and advocate who has sat on both sides of the aisle in civil rights cases. From my representation of Federal agencies, such as the Federal Bureau of Investigation, the Central Intelligence Agency and the Department of State in civil rights and related cases, I understand that often there can be complex and just explanations for what on the surface may appear to be callous governmental activity. Governments often suffer unfair criticism because the truth rarely catches up with the lie or glib oversimplifications. Sometimes, the government's true motives are honorable and noble but are classified or otherwise confidential for the good of the nation. And to our great credit and strength as a nation, government and its officials suffer criticism which cannot often be fully or totally rebutted.

Similarly, private plaintiffs of all kinds and stripes sometimes complain of abuses more imaginary than real.

The problem before the subcommittees this morning stands in a uniquely special position. It is beyond the pale of tolerable or excusable governmental activity.

Forced prison labor and torture are as real and worthy of the Congress' attention as any other human rights issue I can think of. Such labor has a name in American jurisprudence. It was called peonage. I use the past tense, Mr. Chairman, because it has been in constitutional disrepute for decades and is outlawed by statute, as explained by my colleagues this morning.

Further, even the Empire of Japan, in 1932, nearly 62 years ago, agreed not to continue with this practice. As of today, 129 nations have ratified the convention. We now know that at least one country is not in compliance.

The convention prohibits forced labor, which, among other things, is work which is exacted from a person, "as a consequence of a conviction in a court of law, and that the person is at the disposal of private persons, companies or associations."

Mr. Lavinger's heart-rending testimony this morning can leave no doubt that he has been subject to the kind of prohibited activity embraced by this convention. How can Kip Lavinger's labor be described as anything but coerced, given the Hobson's choice of working literally like a slave on Sega, Burberrys or Mizuno prison assembly lines or being held in what a civilized person can only call a hybrid of the worst elements of a torture chamber and solitary confinement.

Further, the Universal Declaration of Human Rights prohibits slavery, Mr. Chairman. The records of the discussions of the draftsmen of that Declaration, which comprise the closest thing the international community has to a legislative history for the Declaration, shows that the Declaration's prohibition of slavery was intended to embrace the forced or prison labor that we have heard about today.

I recognize, and so do my colleagues, I believe, that the reach and limits of policymaking and diplomacy are quite different and that the singlemindedness of a lawyer's advocacy can lead one to neglect how diplomacy can ameliorate a problem. Turning first to what Congress and the executive branch may consider in this regard, I have a few comments to add.

The subcommittee may wish to explore the feasibility of a disclosure requirement on goods imported into this country with regard to the use of the type of labor that Kip has been subjected to.

It is clear from the record before the committee thus far that the Government of Japan believes that its conduct in these prisons is not a violation of their domestic law or of any international norm of conduct. Rather than engage, at least for the time being, in an extended process of clarifying whether or not these internal Japanese practices are lawful or unlawful as a matter of international law—we, of course, believe they are not lawful—the Congress could impose a reporting requirement that any of these goods imported into the United States bear identification as such.

While it appears that the frequency of these abuses in Japanese prisons are relatively few relative to our general population here in the States, such a simple reporting requirement on goods imported here would likely have an enormously therapeutic effect on this heinous practice overseas. Who would purchase a toy ski pole set, even if it were decorated with the stars and stripes, if they were so proudly affixed to these poles by an American serving time in a foreign jail? No one. The economic realities of the marketplace would go a long way to stop these abuses of human rights.

Turning to direct assistance to the victims, you know from previous speakers that, except for the prisoners themselves, many parties have a great deal to account for in their responsibility for deviating from established norms of civilized conduct within the prisons themselves. In my view, legal relief for our citizens subjected to these abuses should be available in our courts here in the United States against the governments and commercial concerns joined in common enterprise overseas.

Because this behavior has been roundly prohibited by the international community for 62 years or more and presumed extinct except for the Peoples Republic of China, there is little law on the books on how to redress this grievance. These abuses have not seen the light of day, sir, until today. Nevertheless, and with respect to governments in particular, the U.S. Foreign Sovereign Immunities Act should provide some measure of relief. Although this case today is novel, the FSIA strips governments of their traditional immunity from suit and liability in instances where the government is engaged in commercial enterprise.

The subcommittees may wish to hold supplemental hearings in collaboration with the Judiciary Committee or the Trade Committee or the other committees the Chairman has mentioned on possible amendments to the FSIA to address directly the problem before us.

While I believe a strong argument can be made that the statute covers the wrongs that we have heard of, an amendment would serve to underscore the concern of the Congress and the American people over the plight of Kip and others. For it seems plain, that unless the Japanese penal system undergoes a radical reorientation in values, others will go through the same dreadful experiences into the indefinite future.

The industrial giants who are the junior partners in this dirty business most assuredly will rely on every defense they can in resisting compensating prisoners for the damages they have suffered. The courts of our country have correctly asserted criminal jurisdiction in cases of gross violations of norms of international conduct. The universal principle and the passive personal principle have served as aids to domestic jurisdiction over crimes committed on Americans overseas.

Private plaintiffs should be able to rely upon these same devices in seeking redress of private harms flowing from these breaches of public international law. The subcommittee may consider exploring further avenues for the enforcement of these norms by expansion of the reach of our courts in this regard.

In our time, Mr. Chairman, perhaps the most eloquent and effective exponent of the triumph of the human spirit in the dark of prison is Aleksandr Solzhenitsyn. He returned only a few days ago to his homeland from self-imposed exile in Vermont. His words, written long before Kip Lavinger's plight, ring with truth and, in my humble opinion, serve to underscore the high issues of policy and conscience we heard of today. They deserve follow-up and some substantive action.

Solzhenitsyn said, "the salvation of mankind lies only in making everything the concern of us all."

All of us here today would be privileged to assist the committee in pursuing solutions to these serious problems.

Thank you, sir.

Mr. ACKERMAN. Thank you very much.

[The prepared statement of Mr. Kurzmann appears in the appendix.]

Mr. ACKERMAN. The panel also has Mr. Kayanuma?

Mr. KAYANUMA. Yes.

Mr. ACKERMAN. I believe you are going to be used as a reference to answer questions. Or do you have a statement as well?

Mr. KAYANUMA. A statement, please.

Mr. ACKERMAN. Is it a very brief statement?

Mr. KAYANUMA. Yes.

Mr. ACKERMAN. Let's give it a try, because we have had the first bells ring on a vote so we are going to take a vote, but let's see if we can get your brief statement in first.

### STATEMENT OF HIDEYUKI KAYANUMA, JAPANESE CIVIL RIGHTS ATTORNEY

Mr. KAYANUMA. My name is Hideyuki Kayanuma. I am a human rights attorney in Japan and—

Mr. ACKERMAN. I am sorry, you are a patent attorney?

Mr. KAYANUMA. Human rights.

Mr. ACKERMAN. Human rights attorney.

Mr. KAYANUMA. In Japan. I have 9 years experience, and I have been representing many foreign criminals in Tokyo.

Before I testify, I would like to say that what I am going to testify today is just my own opinion. I am not representing any organization of Japan today. So just my own personal opinion.

As far as I know, I have never heard that—this issue being discussed in our country so far. So even among like human rights attorneys I have never heard this type of discussion. So this is the first time to be discussed. So, therefore, it might be that our Government don't know whether this practice wrong or not. What the problem with this.

So I just strongly recommend that our Government, Japanese Government, start to study this issue immediately. And if we find this practice wrong, we should abolish this practice by our own decision, and that is all.

And, again, what I am testifying today is just my personal opinion. Thank you.

Mr. ACKERMAN. Thank you very much, Mr. Kayanuma.

We are going to take a break. It will take probably 10 minutes, just to give you a time reference, in order to complete this vote, and we will be right back. The committee stands in recess.

[Recess.]

Mr. ACKERMAN. The subcommittee will come to order.

Mr. LAVINGER, perhaps you can tell us how many visitors you had during the course of your incarceration. Remind us again how long that was.

Mr. LAVINGER. Sixteen months total, Congressman. And the number of visitors that I had, when I was at the police station, was zero, aside from U.S. consul from Osaka, Bruce Howard. I had several attorney visits. Every visit that I had, regardless of who it was with, was behind a Plexiglass partition.

Mr. ACKERMAN. That was during the 35-day interrogation process?

Mr. LAVINGER. Yes, even with the United States—they tried—the police tried to get a censor in to monitor the conversations between myself and the—and Bruce Howard, the U.S. consul in Osaka, and he refused, threatening to make an issue of it. And the police—

Mr. ACKERMAN. Who was it that refused?

Mr. LAVINGER. The police. The police wanted a censor in to monitor the conversation between myself and Bruce Howard. Bruce Howard said that he would not stand for it and that he would file a formal complaint, and the police pulled the censor from the meeting.

Mr. ACKERMAN. Mr. Kayanuma, is such a lengthy interrogation period a normal part of the process in Japan?

Mr. KAYANUMA. Usually 23 days.

Mr. ACKERMAN. Twenty-three days would be a normal—

Mr. KAYANUMA. Yes, that is normal.

Mr. ACKERMAN. That would be a normal interrogation process?

Mr. KAYANUMA. Yes.

Mr. ACKERMAN. Is this period of time exceptionally long? Is that problematic or—

Mr. LAVINGER. Congressman, if I can answer, please.

The Japanese police have the right to ask the judge to hold an accused criminal—they can ask of a judge for permission to hold a prisoner for an extended period of time, which can be—which can have no end to it. Indefinitely.

But I don't think the 35 days is excessive. I know some prisoners with whom I have spoke—

Mr. ACKERMAN. It is part of the normal system?

Mr. LAVINGER. Some people have spent 8 months in interrogation in a police station.

Mr. ACKERMAN. And that is in the police station itself?

Mr. LAVINGER. In the police station, leading up to—and that time is usually—only a fraction of that is applied toward the sentence.

Mr. ACKERMAN. Now, for the record, you are not contending that you were unjustly accused or unjustly tried or unjustly found guilty when innocent, are you?

Mr. LAVINGER. No, that is not the issue here. The issue here is I had to work on these products for these companies and also the treatment.

Mr. ACKERMAN. You were visited by somebody from the U.S. consulate, you said, during the course of your internment in the police station, during the interrogation process. What about afterwards?

Mr. LAVINGER. The meetings were less frequent.

Mr. ACKERMAN. Meetings between whom?

Mr. LAVINGER. Between myself and the U.S. consul. Is that what you were asking?

Mr. ACKERMAN. Yes. Did they visit you while you were incarcerated, during the 16 months?

Mr. LAVINGER. Since I was transferred from Osaka to Tokyo, I switched jurisdictions. And I was visited by both the U.S. consulate in Osaka and the U.S. Embassy in Tokyo, once I was, and I was regularly visited by consular officers.

Mr. ACKERMAN. When you say regularly, how frequent would that be?

Mr. LAVINGER. In Tokyo, it was once every 3 months. Although I could write letters as often as I want in some cases they weren't allowed to be sent for fear of reprisals. And—I am sorry, go ahead.

Mr. ACKERMAN. Did you make them aware or were they aware of the fact that you were participating, albeit involuntary, or that indeed you were being forced to participate in prison labor?

Mr. LAVINGER. Did the U.S. Embassy or consul know?

Mr. ACKERMAN. Yes.

Mr. LAVINGER. Yes.

Mr. ACKERMAN. What was their attitude toward that? Did that trouble them?

Mr. LAVINGER. They were, they just didn't know whose problem it was. They didn't know whether it was a human rights issue, prison labor issue. They didn't know where it fell.

Mr. ACKERMAN. Did they know it was a problem or did they indicate that they thought it was a problem?

Mr. LAVINGER. Well, I don't think they realized it was a problem.

They indicated—I told Tony Edson during meetings, I said—Anthony Edson, Steven Anthony Edson, the U.S. consul in Tokyo—I told him that I was making goods and I just didn't think that it was right. I thought there was something wrong with it and can he look into it. And he said, listen, the goods—we don't have any proof the goods are being exported so we don't know what to do.

And upon my release he asked—

Mr. ACKERMAN. He said we don't know what to do about it?

Mr. LAVINGER. We, basically, can't do anything about it if it is not being exported. He didn't seem to know what the law was regarding it.

Mr. ACKERMAN. But he was aware of your situation, that you were—

Mr. LAVINGER. Yes, every American in there was.

Mr. ACKERMAN. Did he know that this was a widespread practice?

Mr. LAVINGER. Yes, I believe he does.

Mr. ACKERMAN. You say he was aware that every American—that is his awareness. Was this a practice participated in exclusively by Americans or this was everybody?

Mr. LAVINGER. This is everyone. Every Japanese prisoner and foreign prisoner.

Mr. ACKERMAN. There is indeed a book of guidelines for Americans arrested in Japan. You were made aware of this when?

Mr. LAVINGER. This was sent to me. It was supplied—this is written by the U.S. mission to Japan. It was given to Bruce Howard, the consul in Osaka.

Mr. ACKERMAN. Without objection, this document is being entered into the record.

[The information appears in the appendix.]

Mr. LAVINGER. Bruce Howard sent it to me. It was supplied by Steven Anthony Edson in Tokyo to give to me.

Mr. ACKERMAN. At what point?

Mr. LAVINGER. Just after my conviction to get me ready for the next stage of my imprisonment.

Mr. ACKERMAN. And this document, indeed, matter of fact, advises American prisoners that they are to expect forced prison labor?

Mr. LAVINGER. Yes, it does.

Mr. ACKERMAN. Is that accurate?

Mr. LAVINGER. Yes, on page 20.

Mr. ACKERMAN. And what was your assumption when you read that? That that was a normal course of action? Not something that was unusual?

Mr. LAVINGER. I was in a different frame of mind. I was in solitary. I was looking forward to just not having to sit cross-legged on the floor for 12 hours a day and doing nothing. I wanted to get out of the cell and do anything. So, it didn't seem right, but it was something to do.

Mr. ACKERMAN. But the Embassy presented it as this was normal standard operating procedure for American prisoners?

Mr. LAVINGER. Yes. This is quoted in my statement also.

Mr. ACKERMAN. Concerning the products that you made. You made—

Let's start with the shopping bags. How long did you work on shopping bags?

Mr. LAVINGER. For approximately one month.

Mr. ACKERMAN. And tell us again what shopping bags you made or what the shopping bags claimed to be for.

Mr. LAVINGER. I am sorry.

Mr. ACKERMAN. Who were the shopping bags for or what did they say on them?

Mr. LAVINGER. I made shopping bags for numerous companies. However, the ones that I could recognize—and sometimes I had written home about them just to get the name of the company out of the prison, send it home in a letter. Fortunately, they made it out of the prison, and we have letters.

But I made bags for Burberrys of London, Mizuno Sporting Goods, which is a very large sporting goods company, and they have many interests here in the United States, Mitsukoshi Department Stores and Daimaru Department Stores. Both of those departments stores are all over Asia, not just in Japan. And they are the two largest department stores in Asia, and they are both multibillion dollar concerns.

Mr. ACKERMAN. You say you made them for the companies. Do you know that for an absolute fact or you made shopping bags that had their names on them?

Mr. LAVINGER. No one from the company came around. I was instructed—I was instructed by a guard how to make these. All of the materials were brought to my cell by a guard or another prisoner.

Mr. ACKERMAN. You made these in your cell, not in the factory?

Mr. LAVINGER. No, this was—correct. I made these in a solitary cell, similar to the cell in which I made clothespins.

Mr. ACKERMAN. Was there a factory that was used for the production of shopping bags? Were you the only one who made it in a solitary setting?

Mr. LAVINGER. No, the entire solitary wing, which is Building 4 of Fuchu Prison, was dedicated to newcomers to the prison and to chobatsu cells, and there are two floors there.

Mr. ACKERMAN. Was that Building Number 4 used exclusively for the production of shopping bags?

Mr. LAVINGER. Not exclusively. It was also used for punishment. It is the same—

Mr. ACKERMAN. But the prisoners who were there were—

Mr. LAVINGER. Yes, it was exclusively—

Mr. ACKERMAN. I hated to say employed. Preoccupied perhaps is a better word. They were working on the production of shopping bags?

Mr. LAVINGER. Correct.

Mr. ACKERMAN. But there was no shopping bag factory, per se?

Mr. LAVINGER. It was a shopping bag factory. For example, in the middle there was a guard station and you have wings on the end, two wings. In the middle there would be supplied—there was a supply room. So that is where the materials would come from. Glue and handles and cardboard slats and things like that that have to be inserted into the bags.

Mr. ACKERMAN. Was that building dedicated to that purpose or did different products come along after a month or two that were produced in that building?

Mr. LAVINGER. It was most—I would say 95 percent or 99 percent dedicated to that. But once I saw some Christmas decorations in there, and I would like to point out that the Japanese do not celebrate Christmas, so I don't know why there were Christmas decorations in there.

Mr. ACKERMAN. Were you there during Christmas?

Mr. LAVINGER. No, I arrived there April. I believe it was April of 1992.

Mr. ACKERMAN. And you were in Tokyo by the time Christmas came.

Mr. LAVINGER. No, I was in Osaka during Christmas, up until mid-April.

Mr. ACKERMAN. But if you were in prison for a full 16 months, you must have spent Christmas someplace.

Mr. LAVINGER. The first Christmas I spent in the Osaka House of Detention waiting for my trial.

Mr. ACKERMAN. They didn't use the Christmas decorations for the prison, is my question.

Mr. LAVINGER. I don't think so, no. I did spend—excuse me. I did spend the following Christmas in prison, and we had no decorations.

Mr. ACKERMAN. Were you allowed to celebrate religious holidays in prison? You made a point of the Rastafarian being denied.

Mr. LAVINGER. Yeah, you were allowed to. It was discouraged for this reason. If—and I haven't covered this before—if you request to, say take a day off for Yom Kippur or for a holiday.

Mr. ACKERMAN. That is a religious Jewish holiday.

Mr. LAVINGER. Jewish holiday, correct. You do not go to work, and they will take all of your belongings and move them back over to Building 4 from Building 2, where all the foreigners live. And if you keep on doing this over and over, it's not encouraged because they have a lot of paperwork to do, so it could affect your parole by celebrating holidays.

Mr. ACKERMAN. Were you indeed allowed to celebrate holidays or not, if you wanted to?

Mr. LAVINGER. Yes, but it would work against you.

Mr. ACKERMAN. So you were able to see a spiritual adviser, for example.



Mr. LAVINGER. No. I was denied permission to see both a priest and a nun. Sister Jane I know was the nun. She is Canadian. The priest—I don't remember his name. But I am Jewish.

Mr. ACKERMAN. Help me with this.

Mr. LAVINGER. I am sorry.

Mr. ACKERMAN. Why were you—you requested to see a priest.

Mr. LAVINGER. I requested to see anyone, basically—social workers, priest, a nun. And I was denied because they knew I was Jewish and——

Mr. ACKERMAN. In other words, they denied you access to any spiritual——

Mr. LAVINGER. Correct. Because I was Jewish, and it was not within my faith.

Mr. ACKERMAN. And you even asked if you were able to see a priest or a nun.

Mr. LAVINGER. Many times.

Mr. ACKERMAN. And that was denied as well.

Mr. LAVINGER. That was denied.

Mr. ACKERMAN. How many shopping bags did you make personally?

Mr. LAVINGER. About—between 900 and 1,300 a day.

Mr. ACKERMAN. A day.

Mr. LAVINGER. A day. Yes, I worked very hard to try and earn my way out of Fuchu Prison.

Mr. ACKERMAN. Did you receive extra money for the bigger production numbers or——

Mr. LAVINGER. Well, I received, for example, my first month of work, 488 yen.

Mr. ACKERMAN. Which translates in American money to?

Mr. LAVINGER. Just over \$3. And from this \$3 I had to purchase a toothbrush, toothpaste, soap, and it was just not enough money.

Mr. ACKERMAN. Extravagant.

Mr. LAVINGER. Extravagant.

Mr. ACKERMAN. So you made \$3 and change for what seems to be about 170 hours——

Mr. LAVINGER. 168 hours.

Mr. ACKERMAN [continuing]. 168 hours of work. What shopping bags were you producing?

Mr. LAVINGER. For what companies?

Mr. ACKERMAN. Yes. What companies' names appeared on the shopping bags?

Mr. LAVINGER. That I can recall and——

Mr. ACKERMAN. You cited Burberrys before.

Mr. LAVINGER. Burberrys.

Mr. ACKERMAN. How many Burberry bags did you produce?

Mr. LAVINGER. Maybe I worked on Burberrys for 5 days, so probably 6,000. And I wasn't the only prisoner working on Burberrys.

Mr. ACKERMAN. Say 5,000.

Mr. LAVINGER. Yeah, probably. Around five, average.

Mr. ACKERMAN. And how many prisoners were working on Burberrys' shopping bags?

Mr. LAVINGER. Perhaps 8 or 10 at any given time.

Mr. ACKERMAN. So that is roughly 50,000 shopping bags——

Mr. LAVINGER. Correct.

Mr. ACKERMAN [continuing]. That bore the Burberrys' name.

Mr. LAVINGER. Correct.

Mr. ACKERMAN. And was that the entire production line? Did it stop and switch to something else or did Burberrys' production come back from time to time?

Mr. LAVINGER. It did come back. But when it came back I was working on a different bag. So that wasn't given to me. Given to someone else.

Mr. ACKERMAN. So there were more orders for Burberrys' shopping bags?

Mr. LAVINGER. Correct. This is all rotated. There would be trucks outside that would take the bags away once we finished them.

Mr. ACKERMAN. Did the trucks bear any markings that you might recall?

Mr. LAVINGER. Not that I can translate. I didn't learn how to write Japanese and speak Japanese until sometime later.

Mr. ACKERMAN. Were the bags put in boxes with any markings?

Mr. LAVINGER. No, they were wrapped in bundles of 25 in one direction, 25 another. A rubber band was placed around them, and I would put a tag with my number—I think my room number or my prisoner number, which was 4256—on the tag. And that way, if there was a problem, they would come back to me, and I would be punished.

Mr. ACKERMAN. You would be punished for what?

Mr. LAVINGER. Making a mistake.

Mr. ACKERMAN. In the production of the—

Mr. LAVINGER. Correct, making a mistake.

Mr. ACKERMAN. So it was quality control.

Mr. LAVINGER. Yes.

Mr. ACKERMAN. You brought a bag with you, I understand.

Mr. LAVINGER. Yes, there are—

Mr. ACKERMAN. Now, this bag was not obtained from the prison?

Mr. LAVINGER. No, we—I think it might be difficult to obtain a bag from the prison. These were obtained from stores in Japan.

Mr. ACKERMAN. And is this substantially the bag that you were producing?

Mr. LAVINGER. Yes. This is the Mizuno bag. And the Burberrys' bag is just slightly different than this. However, the construction of the bags, especially on the inside—I know how these bags are made, and this is absolutely identical, the quality on the inside.

Mr. ACKERMAN. The Mizuno bag.

Mr. LAVINGER. Yeah, both of them. They actually have the same exact cardboard slats on the inside, right in here. On one side it is white. On the other side it is cardboard. They are glued in. I can see the glue marks. They are not put on very well. It is about typical for Fuchu Prison.

Mr. ACKERMAN. The Burberrys' bag that you have there, you say, is slightly different in design from the bag that you made?

Mr. LAVINGER. The texture of the bag is the same. The size of the bag is the same. The color is—it was a little bit lighter. That is it.

Mr. ACKERMAN. Tell us again which store were these obtained from.

Mr. LAVINGER. This was obtained at—I think this was obtained at——

Mr. ACKERMAN. What country or what city was it bought in?

Mr. LAVINGER. In Tokyo, Japan.

Mr. ACKERMAN. So these came out of a commercial department store?

Mr. LAVINGER. Yes, they did. The Mizuno bag came from a Mizuno Sporting Goods store, which are very popular in Japan and also I hear in England now. And the Burberrys' bag was secured at a Burberrys' Corner in a Japanese department store called Tobu in Tokyo.

Mr. ACKERMAN. OK. But it is entirely possible that these bags, these particular bags that are available in Japanese department stores were not made in prison, by prison laborers?

Mr. LAVINGER. Well——

Mr. ACKERMAN. Is that possible?

Mr. LAVINGER. Since this bag itself was not taken directly from the prison, of course it is possible. However, they are remarkably similar to the ones that I made at Fuchu Prison.

Mr. ACKERMAN. OK.

For the record, I would like to say that I have been in touch late last night with people from Burberry's, and Mr. Barry Goldsmith of Burberry's in New York contends—and I believe, Mr. Griffith, then maybe you could elucidate this a little bit more—has contended that indeed his organization knows nothing about the production of these in any way, and that they have issued licenses to people in Japan as well as other places for the promotion and sale of their products.

Mr. GRIFFITH. Congressman Ackerman, I have been in touch with legal counsel from Burberry's. They deny any involvement in this. They say that their colleagues in Tokyo told them that there is no participation. They even suggested that counterfeiters are making these bags, which, I think, is a somewhat silly representation.

Mr. ACKERMAN. Why do you say that?

Mr. GRIFFITH. I say that because I would think that the Japanese Government would require the bona fides of a contract—of a contractor when entering into a contractual relationship. I also suspect that payment would be done by check, either from that contractor or from Burberry's. And I would—just to finish—I would say that unless there is some status symbol walking around Tokyo with an empty Burberry's bag, I would think something would have to go into that bag.

Mr. ACKERMAN. Well, I don't know what status symbols are anyway. But indeed you are right. I just want to state for the record that the possibility certainly exists, and our committees jointly will have to look into some of these possibilities upon which we speculate right now. Indeed, somebody might be counterfeiting both the bags and goods to make it look more legitimate, then sell it out of license on the street.

Or the possibility, if you can figure all the permutations, the possibility also exists that a license has been issued by any one of these companies to a licensee and the licensee then goes ahead, in addition to buying from the manufacturer, the legitimate label,

then goes and produces both goods and bags on their own to supplement at a much cheaper rate what they are buying from the company, and maybe even marketing these things through legitimate retail outlets in Japan and elsewhere. Because the numbers don't seem to add up.

Mr. Lavinger testifies that 10 people or so, making 5,000 or so bags in just one short shift, or a period of time, produce 50,000 bags. The gentleman I spoke to from Burberry's was astonished. He says they don't use that many bags and wanted to know how many \$770 raincoats he could sell in shopping bags, and would have been delighted to have sold that many. But nonetheless, we are also advised that the shopping bags of Burberry's—and we have not had a chance to speak to everybody; this was a hastily called hearing, on very short notice.

But their plastic bags are used all around the world—and not paper bags. And these are paper bags that have been used. And with the exception evidently in Japan where the paper bags are used, he did not know of any other country that used paper Burberry bags outside of Japan. But the numbers produced here seem far in excess from what they are telling us. And, of course, they are not here to testify. This was a telephone conversation that I personally had with the gentleman from Burberry's, Mr. Goldsmith.

Mr. GRIFFITH. Congressman, you might find the retort from Attorney Barkman, who represents Burberry's, New York, almost comical. He was quite indignant when he told me whenever Burberry scarves are knocked off—which I am told is a popular item—they immediately prosecute this and find the individuals or corporations and take them to court and make them pay all kinds of fines. After he wrote me the somewhat silly letter suggesting that these were counterfeiters, I—

Mr. ACKERMAN. The bags are counterfeit?

Mr. GRIFFITH. That the bags may be counterfeited. I suggested to him if he is going after counterfeiters of scarves, would he not want to go after the counterfeiters of bags? I then offered to provide the services of an internationally known security firm out of London, Link Security, who is well known in the field in over 34 different countries, and we offered to pay half of the investigation costs to determine who these, "counterfeiters might be."

He declined our offer. So they are not interested in finding out who is making these bags, Congressman.

Mr. ACKERMAN. The people from Burberry's, I believe, indicated in some fashion that they had done an investigation themselves.

Mr. GRIFFITH. Yes. Yes, Congressman. Their investigation was a phone call to Tokyo to a—to their legal counsel in Tokyo. That was their investigation. And I was told that if I persisted and if I brought this matter up, that not only would my clients be sued for false allegations, and so would I—and I don't mind, because I will stand by my clients' statements. And I would be happy to bring this into a court of law if they so suggest.

Mr. ACKERMAN. Well, I don't have to remind you, you are all sworn witnesses here today, so I think we have taken care of a good part of that.

The number here—and maybe Mr. Kayanuma can shed some light on this, 50,000 shopping bags. Is Burberry's that large a prod-

uct in Japan that they would be able to use—or do you not have any expertise in that area?

Mr. KAYANUMA. I am not sure. Burberry is very popular in my country, so it might be possible.

Mr. ACKERMAN. That is 50,000 just in this one sitting, in that one week, that were made, and we don't know how many other weeks; or do we?

Mr. LAVINGER. No, I don't.

Mr. ACKERMAN. You don't know. But it is possible these were produced in the hundreds of thousands?

Mr. LAVINGER. It is possible. The only other time I went back into that building was when I went into punishment and I walked into that—into the punishment cell not really paying attention to what was on either side, and I did not leave that cell until my sentence was over, at which time I walked out again not looking to either side, just looking out toward the door. So I didn't pay attention.

Mr. ACKERMAN. I bring this up only because the gentleman from Burberry's thought that it could not be so because they don't use that many shopping bags anywhere. That would be more than their whole year's supply all over for their shopping bags.

Mr. LAVINGER. Perhaps that is just what they were doing then. Perhaps they were just buying shopping bags for an entire year—and I was just there.

Mr. ACKERMAN. It could be they produce 2 years' worth of shopping bags all at once, or 3 years or 4 years. Any of these things are possible. It is also possible because they claim Burberry's does, that they have no knowledge whatsoever and adamantly deny participating in any program for the production of shopping bags within prisons.

And if they are not producing them in prisons, then somebody is, evidently, according to your sworn testimony, producing at least 50,000 shopping bags in this one prison for at least that one incident, as well as other shopping bags with other names on it. Which raises the possibility that if it is not the parent company that is doing it, the Japanese prison authority, one would be led to believe, is producing shopping bags with brand names for other than the company whose signature appears on the bag.

Which gets us into a whole another realm of possibility in international violations, which will have to be jointly explored with several committees, again.

Mr. GRIFFITH. Congressman, that is part of the reason why we are here today. We will conduct our own investigation. Evidently, Customs is not interested because they don't think it is being—things are not being imported to the States. The State Department evidently thinks that this practice—

Mr. ACKERMAN. You say we have nobody here from Customs?

Mr. GRIFFITH. To my knowledge, that is correct.

Mr. HUBBARD. We do not have anybody.

Mr. ACKERMAN. You are saying evidently Customs does not believe?

Mr. GRIFFITH. Congressman, I have met with Customs. I have met with the Intelligence Division of Customs in New York. Customs was only concerned as to whether or not these goods were

being imported into the United States. They did not seem to be concerned that American boys are being made to make products in foreign prisons against their will.

Mr. ACKERMAN. Let me just state for the record that we are making here at this point—except when we delve into the area of the human rights issues and the prison conditions, not necessarily making a distinction between American prisoners and other prisoners, because if it is a violation of a treaty or contractual international obligation—it little matters for that aspect of it, whether or not the prisoners or those who are indentured servants, if you will, are of any particular nationality.

Of course, we as Americans have a particular and rightful concern about citizens of our own country and that they be protected. But I don't think—or at least this Member of Congress is not asking for an exception to the rules being made exclusively for Americans, and that we will look into the violations against Americans as Americans. But what we are also very importantly concerned about is the allegations here that the Japanese Government through its prison authorities is indeed engaging in forced compulsory labor for commercial purposes.

And let me state also at this point in the record, that indeed I had conversations as recently as yesterday with the Japanese Ambassador to Washington and there is no question in his mind that indeed people within the prison system—and I asked how many. He told me 35,000 approximately is the total number of prisoners in Japan of all nationalities, approximately 330 of them are foreigners, and approximately 50 of those are Americans. But indeed all 35,000 are required to participate in forced labor—"forced," I presume, means "against their will"—and that indeed the companies who participate in this program—whose names he hopefully will supply in the future—you have supplied some of them, we are grateful—the companies that participate in the program use the products both for domestic and export purposes. This from the Japanese Embassy directly.

He further states that the companies are told that they should not ship or export any of the goods produced in the prisons to the United States because of the preclusion in our own laws here in the States of importing prison-made goods. But he could offer no—and we are going to get a fuller explanation of this—he could offer no mechanism for enforcement or oversight as to whether or not one's goods were produced in the tens, hundreds or fifties, or whatever large numbers they were produced, that these companies did not then mix them in with products that they made elsewhere and were shipped. There is no oversight over it. And we will have to as well speak to our own Customs people to see if they have made any determinations as to that.

Any response?

Mr. GRIFFITH. May I say something?

I will say to you, Congressman, or I will say to the Ambassador what I said to his legal advisor at the embassy, and Mr. Sakuma when he reported back to me, that the Minister of Justice didn't find anything wrong with this particular practice.

I told him, with all due respect, to communicate to his Minister of Justice that they just didn't get it back during World War II

when the Japanese didn't live up to the Geneva Convention to the treatment of American and British prisoners; they just didn't get it when they violated the rights of the woman that were brought to China from Korea, the "Comfort Women"; they just didn't get it when they conducted biological experiments on prisoners; and if I may say, Congressman, they just still don't get it where they are using forced and compulsory labor for prisoners of all nations.

Mr. ACKERMAN. Let me ask Mr. Kurzmann, if I may, it is your contention that this practice by Japan is in contradiction to U.S. laws and statutes; that is your testimony?

Mr. KURZMANN. Yes, sir, I believe it is. But I must also concede that because this is such an unprecedented phenomenon, that we don't have hard and fast case law that would say so in black letters. But on balance, looking at the law that we have, I believe that good arguments could be made on a variety of theory that this is in violation of American law, both civilly and criminally.

With respect to civil liability, I discussed briefly in my prepared remarks, Congressman, that the Foreign Sovereign Immunities Act cloaks—recognizes the cloak that governments have from liability from suit and damages in courts of law. It stems historically from the British Crown, because the Crown could do no wrong.

However, the Congress in enacting the Foreign Sovereign Immunities Act, removed that cloak with respect to commercial activity.

And Mr. Griffith and I were on the opposite sides of the case in the Southern District of New York involving commercial activity on a different continent that had effects in the United States, and we made law in that case when we successfully argued to the U.S. District Court that although commercial activity overseas can take place overseas, if it has effects beyond the boundaries of that country, and even if the sovereign authority of that country is involved, that there can be civil liability in the United States.

Here, the commercial aspect of the activity is clear beyond per adventure, if, in fact, the goods are being imported here. I think the Chair was very successful in eliciting testimony to suggest that there is commercial impact of this activity outside the borders of Japan. I think it is fairly reasonable to suspect that quite strongly.

We don't yet have firm proof that we have the commercial impact within the United States. But the two department stores that we heard about today have branches all over Asia and I think we would be surprised if those bags are confined within Japan itself. If those goods came to the United States, certainly I think we would have jurisdiction here because of the commercial nature of the activity.

With respect to the violation of these international norms of conduct, insofar as prison labor or forced labor is so heinous, so condemned within the international community, and I think it is clear that it is, there are principles of international law, which in the Klinghoffer case, for example, involving the hijacking of *Achille Lauro* ocean liner were in the U.S. District Court for the Southern District of New York to obtain jurisdiction over parties engaged in business in New York and which engaged in these unlawful activities on the high seas and American courts were able to extend jurisdiction.

We do need to investigate further the connection between entities, for example, like Burberry's, which might or might not have been directly involved or have been removed through the use of contractors or licensees or subcontractors and remains to be seen whether these veils, if they do exist, can be pierced or not.

Mr. ACKERMAN. Mr. Atkins, do you want to add anything to that?

Mr. ATKINS. Yes, sir. I think that it is clear under Title and U.S. Code, Section 1761, that clearly makes it an offense if, in fact, these products are brought into the United States, is a violation of U.S. criminal law.

Mr. ACKERMAN. Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. ACKERMAN. The ranking Republican member of the full Committee on Foreign Affairs.

Mr. GILMAN. Mr. Chairman, I want to thank you for conducting this hearing, and I only regret that it was on such short notice that more of our members would have been in attendance, and I recognize some of the problems you were confronted with.

Mr. LAVINGER, did you make a request when you were arrested to consult with the U.S. Embassy?

Mr. LAVINGER. Yes, I did.

Mr. ACKERMAN. And what was the response?

Mr. LAVINGER. The police said that they would contact the embassy when they had the time to do so. Then they said that—later on, they said that they did. However, the embassy did not want to come see me because they were too busy.

Mr. GILMAN. Did you ever verify whether the embassy had been contacted?

Mr. LAVINGER. Yes, I did. I spoke with Bruce Howard of the U.S. consulate in Osaka and he told me that it was a lie and a typical tactic of the Japanese to make one's outlook seem hopeless, that is why they extract confessions.

Mr. GILMAN. So the embassy never knew about your incarceration?

Mr. LAVINGER. They found out through friends in Japan who contacted my people in New York and my family, and friends both in Japan and New York called the U.S. consul in Osaka and they found out about it that way, but not through the police.

Mr. GILMAN. How soon did the U.S. Embassy contact you?

Mr. LAVINGER. About 2½ days it took for them to get to me after arrest. Two and a half days.

Mr. GILMAN. After arrest, 2½ days?

Mr. LAVINGER. Correct. But by that time I had already been held in an interrogation room, shouted at constantly, tied to a chair, while they were interrogating me for already, at that point, 30 hours.

Mr. GILMAN. Did you have the benefit of counsel at all?

Mr. LAVINGER. In Japan you are not afforded the right to have an attorney present during questioning. You are not entitled to have an attorney until after you are indicted. And although my family hired a private Japanese attorney who represented me, but he still was not allowed to be with me during interrogation.

Mr. GILMAN. Were you able to at some subsequent time consult with counsel?



Mr. LAVINGER. At my attorney's schedule, there wasn't that much that went on between he and I, other than: Please pass this message. So he really could do nothing since his hands were tied.

It is all basically up to the police; the police recommendation to the prosecutor, and the prosecutor's recommendation to the court. For example, the police can say, he should—he is guilty—and to the prosecution—the prosecution then during court will recommend a sentence of 3 years. That is all the prosecution has to do to ensure that that alleged criminal goes to prison. Because they will not send—they have the—the judges have the option to release someone on probation if the sentence is under 3 years. It is very, very unlikely—and for any sentence over 3 years to—

Mr. GILMAN. During your 16 months of incarceration, how often did the embassy communicate with you?

Mr. LAVINGER. The U.S. Embassy or the U.S. consulate?

Mr. GILMAN. Well, U.S. consul or the embassy?

Mr. LAVINGER. In Osaka, I was visited by the U.S. consulate perhaps seven times, from November 13, 1991, until April 15 or 16, 1992.

Mr. GILMAN. And did you share with the consul some of the harsh treatment that you incurred?

Mr. LAVINGER. Yes, but if I may, if I may quote the guidelines for Americans arrested in Japan.

If you will just give me a second?

Mr. GILMAN. I have that before me.

Mr. LAVINGER. OK.

They say that—actually it is in a letter from Bruce Howard—that showing an unresisting attitude in Fuchu Prison is helpful in gaining consideration for parole. So—

Mr. GILMAN. Well, I am asking you again; did you notify the consul of the harsh treatment that you—

Mr. LAVINGER. Yes, I did. But they said you have to bear with it because this is the status quo.

Mr. GILMAN. Let me ask the panelists: Had you—were you able to verify any direct shipments at all to the United States from prison labor?

Mr. GRIFFITH. No, Congressman Gilman, we were not.

Mr. GILMAN. Or to any other destination?

Mr. GRIFFITH. No, because we—at this point, we just didn't have the funds to do that, although we would have involved ourselves in an investigation with Burberry to see what they were producing.

Mr. GILMAN. Mr. Kurzmann, Mr. Atkins, any—Lavinger, were you able to identify any stores for destination, any commercial outlets in the United States?

Mr. LAVINGER. No, because I was discouraged from asking questions. In fact, I was discouraged from talking. It was punishable by "chobatsu."

Mr. GILMAN. After your release, were you able to identify any?

Mr. LAVINGER. No, we have been working on putting this together, and it is a very difficult thing to a civilian like me to investigate.

Mr. ACKERMAN. Will the gentleman yield?

Mr. GILMAN. Yes, I would be pleased to yield to the Chair.

Mr. ACKERMAN. Is it the contention of any of the attorneys on the panel that it is a violation of international obligations to send prison-produced commercial products only to those countries that prohibit the importation of such products, or is it a violation of the conference to ship such goods anywhere?

Mr. ATKINS. I would say that it depends on the circumstances in which they are being produced. If they are being produced under circumstances that are fair and reasonable that would comport with, for instance, the United States, where we have very strict rules, then there might not be a violation. But it is a combination of human rights aspects as well as other aspects that we would complain about, and that would involve not only the direct violation of U.S. law, but human rights aspects. Under the circumstances that I heard described here today, we would feel that would be a violation. They should not be shipped anywhere else.

Mr. ACKERMAN. We are going to take a break here for the pending vote and come back within a few minutes.

[Recess.]

Mr. ACKERMAN. The subcommittee will come to order.

Mr. Lavinger, you had stated in your testimony that there were boxes into which went some of the products made or assembled at the prison facilities, and on those boxes it said "Made in Taiwan" or "Made in China"?

Mr. LAVINGER. Correct.

Mr. ACKERMAN. And what products were these that were going into these boxes?

Mr. LAVINGER. I wasn't employed in that area of the prison. And I was not—again, I wasn't encouraged to turn my head in that direction for fear of minimum, 7-day chobatsu sentence. Which was enforced. However, when I would go to—when I was taken out for different reasons, I would be able to turn my head and see the boxes. I would see them—they were—a lot of the small plastic parts and pieces, plastic cases for games, all different colors.

Mr. ACKERMAN. Was there any explanations that were given or that you heard discussed as to why boxes would be marked "Made in China" or "Taiwan"?

Mr. LAVINGER. It is something that I didn't even realize was so important until—until someone from Customs pointed it out to me and they asked me about it. They said: Did these boxes just say "Made in Japan" on them? And I said: No, they said "Made in China," "Made in Taiwan." And that is when it sort of clicked in my mind, and I informed my lawyer.

Mr. ACKERMAN. What did the Customs people tell you when you told them there were boxes marked made elsewhere for products that were indeed being made in Japanese prisons?

Mr. LAVINGER. Well, the senior special agent that I had met with said that it reminded him of the Wal-Mart case, where he went into a Wal-Mart store that the Wal-Mart people had claimed that their stuff was made in the United States, and he looked at the label in the top, behind the neck, and it said "Made in the United States," but then he looked on the inseam and it said "Made in China," so that is the parallel that he made.

Mr. ACKERMAN. Did he indicate that it was a violation of any particular law?

Mr. LAVINGER. He said if it were a violation, it would be a very serious one.

Mr. ACKERMAN. Do you know if he followed up or followed through to check out if indeed there were violations?

Mr. LAVINGER. Well, as far as I know, the trail of Customs when I stopped talking to them, went up the ladder in New York to the top and then it went to Washington, and this is where it has been. And they seem to have taken the attitude that there is nothing wrong, and that is about it.

Mr. ACKERMAN. Was that an official finding that they issued—perhaps, Mr. Griffith? Did this go to the top?

Mr. GRIFFITH. I was not aware of the finding. I was told by a senior Customs intelligence official that he was making a report to Washington. I got a phone call back about 3 months later to ask whether I had started any litigation and told them that I had not as of that time, and that is the last I heard from them.

Mr. ACKERMAN. So we do not know in fact whether or not this is under active consideration?

Mr. GRIFFITH. No.

Mr. ACKERMAN. Or any investigation over at—

Mr. LAVINGER. Excuse me. I have tried to call Intelligence at Customs and I was told that they will not talk to me. My lawyer must do it.

Mr. GRIFFITH. Custom's only concern to me, Congressman, seemed to me to be whether or not we could give them any evidence that goods were coming into the States, that is all they were concerned with.

Mr. ACKERMAN. Do you know if they made any contact with the Japanese prison authorities?

Mr. GRIFFITH. I do not know that.

Mr. ACKERMAN. Do you know if any government agency made any contact with the Japanese prison authorities?

Mr. GRIFFITH. I do not know that.

Mr. ACKERMAN. Mr. Lavinger, who paid you?

Mr. LAVINGER. For my work?

Mr. ACKERMAN. Yes.

Mr. LAVINGER. It was paid to me in my factory by my factory guard.

Mr. ACKERMAN. How often did you receive payment?

Mr. LAVINGER. It came to me, but not in the form of physical money, I never touched money. It went into an account. I would be paid once a month.

Mr. ACKERMAN. And the average monthly pay in U.S. dollars? I know you gave us a 1-month figure.

Mr. LAVINGER. I know that in it was in April or May of 1992, I made about \$3 for the month, about \$3 and change for the month. But after that, there is a system of progressive treatment where you—if you don't break rules, you go up in class and they pay you more, so—

Mr. ACKERMAN. More, means how much?

Mr. LAVINGER. Maybe I made at the top, \$8.00 a month. That is after 11 months of being in Fuchu and 12 months of working.

Mr. ACKERMAN. Was that considered a motivating factor; the increase in pay for people?

Mr. LAVINGER. I assume that with some people from Third World nations, they can—they would consider that a decent amount of money or, you know, monies substandard to the minimum wage of their country. But my coming from the United States, I don't consider it.

Mr. ACKERMAN. Mr. Griffith, in your discussion with people from Customs, was there any discussion about the possibility that these goods were used in transshipping to get around Customs quotas or anything of that nature?

Mr. GRIFFITH. No, sir. They—I made no inquiry as to that. I got the impression from meeting with Customs, they were well intentioned but they seemed to be more concerned as to whether or not we were going to make any complaints against Customs, and I assured them that we were not.

Mr. ACKERMAN. Have you filed any complaints anywhere?

Mr. GRIFFITH. No, I have filed no official complaint.

Mr. ACKERMAN. Or brought litigation anywhere as yet?

Mr. GRIFFITH. No. The only complaints I filed are—yes, what I did was I wrote a letter to the Japanese Embassy a number of months ago asking to meet with someone—I have got a copy of the letter—who would be able to address not only our claims but to stop the activity. And I spoke with a legal adviser who got back to me after 2 months, and he told me he had spoken with the Minister of Justice, and that the Minister of Justice said that this was appropriate, and I never heard from them again.

I can tell you that this morning, though, I dropped off a copy of my statement personally to the Ambassador at the Japanese Embassy so that he might see exactly what our claims are.

Mr. ACKERMAN. Have you been in contact with any other governmental agency of the United States or any State or authority?

Mr. GRIFFITH. No.

Mr. LAVINGER. Excuse me, Congressman.

Mr. ACKERMAN. Yes.

Mr. LAVINGER. I have spoken with the U.S. Embassy in Tokyo quite frequently, and recently, about this.

Mr. ACKERMAN. Concerning.

Mr. LAVINGER. Concerning what was going on and what we had planned to do. And he—again, he seemed to not know whose problem it was, and just said: Oh, well, we will see what happens.

Mr. GRIFFITH. Congressman, it is my firmest feeling, and let there be no mistake, that these are citizens of the United States of America, that they are entitled to protection of the U.S. passport, and the Secretary of State must accord them all rights that are due them. We can't split hairs as to whether or not this falls within—to a professorial discussion as to whether or not the Japanese are violating international conventions. This is a bad process. It is a bad decision. It violates morality and it violates human decency. It violates the International Declaration of Human Rights. It must be stopped.

Mr. ACKERMAN. Let me say on behalf of the committee, that indeed we are not only surprised but shocked by the allegations here. Indeed, by the fact that the Japanese Embassy confirmed that there is mandatory forced prison labor taking place throughout the Japanese penal system, and that products produced are available

for export. And this committee and these committees certainly have a lot of work to do in trying to sort out this entire matter.

I want to thank the prior panel—you in particular, Mr. Lavinger, for your testimony here today—allowing both the Congress and the American people to have some kind of insight into what is going on in the realm of forced compulsory prison labor for commercial purposes in Japanese prisons. And I appreciate very much your being here and your testifying before us.

This panel is dismissed with our gratitude. And you are welcome to stay for the rest of the proceedings.

Mr. GRIFFITH. Thank you, Congressman.

Mr. KURZMANN. Thank you.

Mr. ATKINS. Thank you.

Mr. ACKERMAN. Our next witness will be Deputy Assistant Secretary of State for the Bureau of East Asian and Pacific Affairs, Thomas Hubbard.

Thank you very much for being with us, Mr. Secretary, and for your appearance, particularly on such short notice. We appreciate your participation in our hearing.

You may proceed as you wish. If you would like to make an opening statement, we would appreciate it.

#### **STATEMENT OF THOMAS HUBBARD, DEPUTY ASSISTANT SECRETARY OF STATE, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS**

Mr. HUBBARD. Mr. Chairman, ordinarily given the hour, I would forgo an opening statement, but I think for two reasons, I should read my statement.

One, it is very short; and two, I think it covers many of the issues raised earlier, perhaps more comprehensively and in an important, organized fashion than I might do in response to questions.

Let me note that statutory responsibility for the enforcement of the relevant sections of U.S. law on import of goods made with prison labor falls to the U.S. Customs Service. We at State have worked closely with Customs on this issue and will continue to do so. On some technical questions that have been related to this issue, I will have to refer you to my colleagues at Customs.

The U.S. Government has a close and cooperative relationship with Japanese law enforcement officials, with whom we have a broad range of shared interests, including narcotics, terrorism, and organized crime. Our embassy maintains a generally good relationship with Japanese Prison Authorities. At any given moment, we tend to have around 40 American civilians held in Japanese prisons, police stations, or detention centers.

It is an important aspect of our consular responsibilities that we monitor the conditions and treatment accorded these Americans.

All prisoners sentenced to Japanese prisons are required to work. Once sentenced, prisoners are required to work, in return for which they receive some monetary compensation, generally geared to the difficulty of the labor, and become eligible for parole. Convicts can refuse to work, but this will subject them to disciplinary action and normally render them ineligible for parole.

There are three types of prison labor in Japanese prisons: maintenance of prison facilities; vocational training; and production labor.

That third category, production labor, is made up of orders placed by the government and cooperating Japanese Government institutions for their internal use, and orders placed by private companies. Clearly it is in the area of orders placed by private companies that the potential exists for goods to be exported to the United States in violation of U.S. laws forbidding the import of goods made with prison labor.

We have tried over the years to ensure that no products manufactured in whole or in part by Japanese prison labor are imported into the United States, as set forth in Section 307 of the Tariff Act of 1930.

The Japanese understand the seriousness with which we treat this issue. We are told the Director General of the Ministry of Justice's Corrections Bureau has circulated to contractors notices explaining that prisons cannot undertake production of products and parts which will be exported to the United States.

In 1991, the Ministry of Justice added a special clause to contracts between the prison and the contractor, stipulating that the export of prison labor products to the United States is forbidden. We have seen sample contracts which contain this clause.

It is, of course, conceivable that these provisions have been overlooked in some specific cases. That is why we Customs and the State Department are looking closely into Mr. Lavinger's allegations about the import into the United States of goods from Japan made with prison labor. I understand that in July 1993, following Mr. Lavinger's return to the United States, Customs officials spoke with him about his allegations.

I also understand that at the time, Mr. Lavinger, on advice of counsel, declined to identify the companies he alleged were importing products into the United States made with prison labor. We have attempted on our own to investigate these allegations. One U.S. subsidiary of a Japanese firm stepped forward and volunteered to Customs that until 1992, it might inadvertently have used in some products exported to the United States a component manufactured in Fuchu prison in Japan.

These had been supplied by a contractor. After 1992, the Japanese firm severed its relations with that contractor.

Mr. ACKERMAN. Could you repeat that part of your testimony for us again?

Mr. HUBBARD. One U.S. subsidiary—we have attempted on our own to investigate these allegations. One U.S. subsidiary of a Japanese firm stepped forward and volunteered to Customs that until 1992, it might inadvertently have used in some products exported to the United States a component manufactured in Fuchu prison in Japan.

Mr. ACKERMAN. Could you identify that company for us?

Mr. HUBBARD. That was the Sega Corporation.

Mr. ACKERMAN. What products?

Mr. HUBBARD. I understand they were small electrical items component parts.

Mr. ACKERMAN. Do we have any indication of the magnitude of the production of that product?

Mr. HUBBARD. No precise indication. I think a large number of them were manufactured. We are not sure how many may have been imported into the United States.

I don't believe the manufacturer has given us those specifics.

Mr. ACKERMAN. Please continue.

Mr. HUBBARD. These products had been supplied by a contractor after 1992. The Japanese firm severed its relations with that contractor. My understanding is that Customs is still investigating this case, and so it would be inappropriate for me to comment further on the status of an ongoing investigation.

Apart from that case, we have obtained no hard evidence that goods made in whole or in part by Japanese prison labor have been imported into the United States.

More broadly, we have attempted this year to see if there is a way U.S. Customs officers might be able to visit the prisons in question, observe prison labor conditions there, and confirm that the goods being produced are not destined for the American market. We have raised this issue at a high level with the Japanese Government.

We are quite pleased that late last month Japan's Ministry of Justice told our Embassy in Tokyo that U.S. Customs officials would be permitted to visit Fuchu prison, the Japanese prison where all foreigners are held after sentencing to observe conditions involving prison labor there. This will enable us to explore firsthand the allegations Mr. Lavinger has made. Allowing foreign government officials to examine the conditions in a country's prisons is always a sensitive matter for any sovereign nation. We believe the Japanese Government's agreement to let the United States do so is indicative of Japan's real commitment to address our concerns on this issue. Until now we have viewed this primarily as an issue of enforcing U.S. Law regarding the import of goods made with prison labor. I understand there are now allegations that conditions in Japanese prisons or the use of rehabilitative labor in those prisons violates human rights standards or Japan's commitments on forced labor under the International Labor Organization.

Our Embassy in Tokyo informs me that Mr. Lavinger has been the first American prisoner ever to make these sorts of complaints about the prison labor program. Most of our prisoners have spoken of it in neutral terms. Indeed, until now the only critical comments we received about the prison labor program focussed on some American prisoners' frustration that they were being kept away from skilled jobs involving heavy machinery apparently because Japanese authorities were reluctant to put Americans in a position where they might be injured while performing prison labor.

Mr. Lavinger has stated that these labor programs might violate Japan's commitments under Convention 29 of the International Labor Organization. For our part, the United States is not a party to Convention 29, and is not bound by its provisions. We have, however, ratified a later ILO Convention on the Abolition of Forced Labor. Convention 29 does not seem to apply here. Convention 29 applies not to convict labor but to "forced or compulsory labor," which the Convention defines as generally not including "any work

or service exacted from any person as a consequence of a conviction in a court of law." Furthermore, the Convention's language on labor for private firms states that any labor that is a consequence of conviction in a court of law must be "carried out under the supervision and control of a public authority, and that the said person is not hired to or at the disposal of private individuals, companies or associations." All the Prison labor programs in Japan of which we are aware are performed in the prisons, and are supervised by the prison authorities. The private sector may contract for the production of these goods, or purchase them from suppliers, but they do not hire, control or supervise the prisoners performing the labor.

The State Department and the Customs Service have been actively pursuing the issue of possible prison labor exports to the United States since it was first brought to our attention last year. We will continue to do so until we are satisfied that Japan is not exporting any goods made with prison labor to the United States in violation of U.S. law, and is not subjecting U.S. prisoners in Japan to forced labor in a manner that is inhumane or violates Japan's ILO commitments. We hope to work closely with you as we pursue this. I would be happy to try to answer any questions you might have.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Hubbard appears in the appendix.]

Mr. ACKERMAN. Thank you very much, Mr. Hubbard.

The treatment that Mr. Lavinger described, is that in violation of our standards of human rights?

Mr. HUBBARD. Mr. Chairman, some of the allegations regarding treatment that Mr. Lavinger described to us this morning are far more detailed than we had heard previously either during the time in which he was incarcerated or since he was released.

I would, of course, want to read his testimony very carefully and to have competent officials in the State Department from our Legal Department and from Human Rights look at it carefully as well. But in general, it has been the position of the U.S. Government that Japanese prisons do not carry out what we would generally term inhumane treatment of prisoners.

Mr. ACKERMAN. Have you had any complaints from Americans or others as to treatment of prisoners in Japanese prisons?

Mr. HUBBARD. We have had from time to time complaints. I am not aware of any quite as extensive as Mr. Lavinger outlined this morning.

Mr. ACKERMAN. When those complaints have come forth, have investigations been made or has a census been taken of any other Americans that served time in this or other kinds of prisons in Japan?

Mr. HUBBARD. We, of course, take up allegations by prisoners whenever they come to us with charges of inhumane treatment. We have looked into them. I cannot tell you with any certainty whether we have taken a census of other who have been in prison, but our judgment based, on the kinds of complaints that have been brought to our attention and what we know about Japanese prisons, is we do not think they are prisons that engage systematically in treatment that violates human rights.



Prisons are austere places. I think some of the treatment that Mr. Lavinger discussed here today, without becoming subjective, reflects some of the Japanese societal values. The insistence on particular kinds of bodily discipline is familiar in Japanese schools as well as in Japanese prisons.

There are certain cultural gaps there that have to be allowed for, but as a general practice, we have not felt that Japanese prisons engage in treatment that is inhumane or violates international standards of human rights.

Mr. ACKERMAN. Would it surprise you to find that the type of treatment to which Mr. Lavinger was subjected is widespread within the Japanese prison system?

Mr. HUBBARD. As I said earlier, Mr. Chairman, some of the allegations he made are somewhat more extensive, elaborate than I had heard previously. I would like to take a careful look at them before responding directly to that.

I think many of the statements he has made about his treatment do reflect the different cultural mores and standards in Japan. Again, the thought of keeping one's head down, of writing apologies, of writing self-confessions and the like, are practices that are more common in Asia than they are in the United States.

Mr. ACKERMAN. As to the physical treatment of having to find oneself in solitary confinement basically harnessed front and back, necessitating eating your meals off the floor because you have no use of your hands and sitting in your own feces for extended periods of time—that is a cultural difference or is that a clear violation of human rights?

Mr. HUBBARD. Those fall in the category of allegations that are far more extensive and far more damaging than I had heard before. I would like to study them carefully and get back to you.

Mr. ACKERMAN. Please get back to us on the results of your findings, if you can make some determination how extensive this might be. I don't think that there is any charge or claim that Americans are being treated more harshly than others—perhaps, perhaps not, but I don't know that we have heard that today. Indeed, that basically is not the real question here, although we are concerned about Americans in particular. But if it comes to human rights violations and the rights of the 35,000 other prisoners within the system, if they are treated even more harshly, it is a possibility we would be curious and more so to know about that as well, if that would be—

Mr. HUBBARD. We will be happy to.

As I say, many of the things that you have said today go far beyond what he had said to us before either during the time he was in prison or since, and we will look at each of his allegations and examine them from a standpoint of human rights.

Mr. ACKERMAN. Would you be able to have access to the names of other Americans who were incarcerated in Japan so as to be able to interview them to see if they experienced similar types of situations, to be able to make a determination that he was not treated uniquely and that this might indeed be widespread or perhaps nobody else has had this experience?

Mr. HUBBARD. Certainly. I won't say we can get in touch with all of them, and there are privacy considerations involved, but we will attempt to do that.

[The information appears in the appendix.]

Mr. ACKERMAN. You made a point several times in your statement concerning violations attributable to the import into the United States of products made with prison labor.

Mr. HUBBARD. Yes, sir.

Mr. ACKERMAN. Let me say that we find it objectionable completely for commercial products to be made by prison labor and then used commercially, whether it be for export into the United States, domestic consumption or exports to any other country.

Is it your contention that the law or treaty obligations of a nation is violated only if they export into those countries which specifically prohibit the import is or is it the use of prison labor which violates the obligations into which a nation such as Japan has entered?

Mr. HUBBARD. Totally apart from what you or I as individuals might think about the practice, I think our perspective is one of U.S. law and U.S. law as far as I am concerned is violated only if the products are exported to the United States or imported into the United States. Japanese law does not prohibit—

Mr. ACKERMAN. But that would come under the jurisdiction of Customs.

Mr. HUBBARD. That is correct.

Mr. ACKERMAN. Presumably the Justice Department. One might think that the State Department is interested as well in violations of international obligations.

Mr. HUBBARD. As I said, we do not consider that the use of prison labor as we understand it in Japan is a violation of international standards.

Mr. ACKERMAN. What you are saying then is forced prison labor for commercial purposes and intended use for export into the international market is perfectly legal and acceptable as long as it is not exported to the United States?

Mr. HUBBARD. That is correct. That is the view of the Department of State.

Mr. ACKERMAN. What is the big hullabaloo with China?

Mr. HUBBARD. That was over the question of exports to the United States, use of prison labor for products made for export to the United States.

Mr. ACKERMAN. And there was no human rights component to that?

Mr. HUBBARD. Mr. Chairman, we considered that issue. We have a number of concerns about human rights in China. I don't personally handle China and did come briefed today to address that issue.

My understanding is that the issue with China was also a question of exports of prison made goods to the United States and its violation of the 1932 Tariff Act.

Mr. ACKERMAN. So then we deem it acceptable for companies of international reputation doing business in more than one country, ourselves included, to buy or obtain products made by a system of indentured servitude in a particular country?

Mr. HUBBARD. So long as that is work in prisons by prisoners who have been in fact convicted of crimes, we do not consider that

that violates the ILO convention or any other international obligation that we are aware of.

Mr. ACKERMAN. When we discuss treaties and tariffs, the GATT agreement and such, do we not have a concern for heavily government subsidies into particular fields or areas?

Mr. HUBBARD. We do, Mr. Chairman. I am not personally aware—

Mr. ACKERMAN. If products are dumped upon the American market or the international marketplace that are heavily subsidized by foreign governments or quasi-governmental organizations, do we not consider that dumping illegal?

Mr. HUBBARD. I think, Mr. Chairman, you carry various phases. We do get heavily into trade law and neither I nor anyone with me today are experts on trade law. I would think that issues of this sort would become a matter of concern as so far as they involve subsidies. I am not sure to what extent this is true in this case.

Mr. ACKERMAN. We do not as yet know the full scope of this program of forced compulsory labor for commercial purposes including export from Japan. It is possible and probably even reasonable to assume that companies producing goods in prison might also indeed be producing the same goods outside of prison.

Mr. HUBBARD. That is correct. Quite possible.

Mr. ACKERMAN. And if the goods are substantially the same, then we do not know unless some thorough investigation of this has been made, of which I am not aware, and possibly you could shed some light on that, whether the companies involved here have indeed shipped those goods to the United States or elsewhere. Is that an accurate assumption?

Mr. HUBBARD. That is correct, Mr. Chairman. That is one of the reasons we have been pressing the Japanese Government at various levels to allow us to visit the prisons. We have now been granted authorization to visit Fuchu prison and we will take up that offer as just quickly as possible.

Mr. ACKERMAN. Thousands of children's ski sets with American flags on them—would that be something in great demand in the Japanese market?

Mr. HUBBARD. Mr. Chairman, in the Japanese market, I wouldn't rule anything out. If I may pick up a question asked earlier of Mr. Lavinger, I have spent several Christmases in Japan through my career. They do indeed celebrate Christmas in Japan even though most Japanese are not Christians. Christmas lights are in fact very prominent on the streets of Tokyo at Christmastime.

I am not suggesting that these Christmas lights have not been exported somewhere, but almost anything goes in the Japanese market.

Mr. ACKERMAN. Well, one might assume that religious symbols and ornaments are rather universal and cross nationalistic artificial boundaries, but patriotism is something different and usually observes some kind of geographic confines.

I know that my kids, if they took up skiing tomorrow, wouldn't buy ski poles with Japanese flags on them. Perhaps they would buy something with a New York State flag or Queens County or Nassau County emblem or something, but I don't know that they would buy anything with the insignia of a foreign country other than an

American flag and it would seem to me that the Japanese are rather nationalistic.

Some might even suggest it would be heretical for Japanese to buy things, ski sets for their children with American flags all over them, or am I missing something?

Mr. HUBBARD. Mr. Chairman, now that this particular item has been brought to our attention, we will certainly look at it and try to make determination as to whether it is widely sold in the United States or not.

Not to carry this too far, but I think I have seen the American flag on just about every item of clothing known to man or woman.

Mr. ACKERMAN. Terrible how we desecrate that symbol the it not?

Mr. HUBBARD. That is correct.

Mr. ACKERMAN. The other item, one of the other items referenced were the shopping bags.

Mr. HUBBARD. Yes.

Mr. ACKERMAN. And the people from Burberry's with whom I spoke late yesterday seemed absolutely puzzled by this whole possibility and said to me that the shopping bags in the quantity to which I referred was far in excess of their entire company's need; not just in Japan, but their entire company's need, and could not understand the huge production figures of this taking place in a Japanese prison, which was certainly more than curious to them. Perhaps they didn't take seriously the allegation when they first heard it, but I believe they are taking it very seriously now and can't fathom why somebody would be producing in one country for domestic consumption more shopping bags than they have product for.

Can you offer us any explanation other than maybe somebody is exporting the shopping bag?

Mr. HUBBARD. I certainly can't, Mr. Chairman. It baffles me as well. That is another of these allegations that we will follow up in more detail. I have ordered the Customs Service to follow up on.

Now this issue has been brought to my attention dramatically this morning and I will urge that the Customs Service follow up on that specific allegation, in other words, regarding the Burberry's bags.

Mr. ACKERMAN. I am not entirely sure of the corporate structure of any of the companies mentioned and indeed whether they have any American subsidiaries, but indeed there seem to be practices that have been alleged in the possibilities we have heard today which would indicate some exceptionally unfair trade aspects of this entire issue, products being made in such quantities subsidized heavily by imprisoned labor.

Does it concern the State Department at all that goods are being produced by labor at 3 cents an hour for commercial purposes and then are put out in the free marketplace to compete with the world's goods, including American products?

Mr. HUBBARD. Mr. Chairman, it is not—

Mr. ACKERMAN. We could sell our television or our automobiles a heck of a lot cheaper than we do and knock the socks off a lot of people because we have more than 35,000 prisoners, I think

more than that in my town and this town alone. Does that not have a concern for the State Department?

Mr. HUBBARD. Mr. Chairman, I am not sure that this particular issue has been examined from that standpoint. I had understood until this morning that we were having a hearing on whether the Japanese had violated, whether the Japanese prison system had violated U.S. law, specifically the tariff law of 1932, by exporting prison made products into the United States.

The issue has been covered in a broader way this morning. I don't think our trade experts have looked at it, but let me just note that nothing I have heard today makes clear to me that these items are being subsidized. I think one of the earlier panel members commented that the revenues went into the Japanese Government coffers and the prisoners were paid a certain amount. I am not sure that the Japanese Government is getting less for producing those bags than a private firm would be.

We have to examine carefully the issue of subsidization. I don't think it is at all self-evident.

Mr. ACKERMAN. It would seem to me as if a company were being rather heavily subsidized if they didn't have to pay rent, if they didn't have to pay for electricity, if they didn't have to pay for air-conditioning, if they didn't have to pay for heat, if they didn't have to pay for health care, if they didn't have to pay for retirement benefits, if they didn't have to pay for workers compensation, if they didn't have to pay for any of the fringes that are within our industrialized societies.

We can conclude that Japan is one of the industrialized societies, one of the most industrialized societies in the history of industrialization, and that if the government is paying 3 cents for labor, that would cost a heck of a lot more elsewhere, that that indeed not only looks like, feels like and smells like a subsidy, that is a subsidy.

Mr. HUBBARD. Mr. Chairman, we would have to examine the issues. We do not know what in fact the companies are paying the Japanese Government for the product. I think we would have to know that before determining that.

We will look into it further from that aspect.

Mr. ACKERMAN. Is there the possibility that the companies are paying the Japanese Government more than they would pay on the open market for these products?

Mr. HUBBARD. We don't know. We will have to investigate that. I will be quite surprised if they are paying more, but it is possible that they are paying the same amount. We don't know.

Mr. ACKERMAN. Even if they were paying the same amount, and that possibility is certainly there among all the other possibilities, that if your only cost is labor, then you have gotten away with your complete overhead. That is a tremendous saving.

Mr. HUBBARD. We will look into that whole range of issues.

Mr. ACKERMAN. You cited before that you did not think that it was a violation of the ILO conference——

Mr. HUBBARD. Convention.

Mr. ACKERMAN [continuing]. For the Japanese to produce goods in the manner that has been described here. Why is that?

Mr. HUBBARD. Well, let me modify that a bit. I said that the Japanese system as we understand it does not violate the ILO convention. The reasons for saying that are one, clearly it is produced by prison labor, by prisoners convicted of a crime, and that is specifically exempted from the ILO convention.

A second condition is whether they are doing it under the supervision of, by the direction of a private firm and the system as we understand it, and we hope to understand it better as we investigate further. The system as we understand it is run by the prisons.

The workers are supervised by prison guards. They are not working directly for a private company, but rather for the prison, which in turn contracts with a private company.

Mr. ACKERMAN. We heard earlier from Mr. Lavinger that there were indeed people in the prison who appeared to be civilian quality control experts rather than prison guards. Would not that indicate that there was some kind of direct supervision?

Mr. HUBBARD. Well, we don't know—

Mr. ACKERMAN. Prison guards have some strong concern about the quality of somebody's shopping bags?

Mr. HUBBARD. We don't know that these personnel come from the companies concerned. We don't in fact know who they are. We plan to ask further. That is a new element introduced this morning that I had not heard before.

Mr. ACKERMAN. The products produced in the prison, the shopping bags, the water guns, the electronic components, other things, these were produced presumably on behalf of these commercial companies or people acting as the agents of or acting instead of those companies.

Were not the prisoners producing these goods on behalf of those organizations?

Mr. HUBBARD. I wouldn't want to try to put too fine a legal gloss on it, but our understanding of the system has been that in effect the prisons contract with the private companies to produce the goods, but in fact, as in any kind of contracting relationship, the work is carried out under the supervising of the prison authorities.

Mr. ACKERMAN. Which is another savings I would think for the company, not to have to provide supervision if indeed they weren't supervising. Another subsidy you have come up with.

Thank you.

Mr. HUBBARD. We will take a look at that.

Mr. ACKERMAN. The language of the ILO agreement uses the word at the disposal of private individuals, companies or associations as an alternative because it says or, as an alternative to being hired by. Is that not—does that not indicate a clear difference that the company may not hire prisoners out, or I think is one of the operative words here, be placed at the disposal.

Is their right to their own labor not put at the disposal for the benefit of these private companies?

Mr. HUBBARD. Mr. Chairman, my colleague, Mr. Jeff Kovar from our—from the Office of the Legal Advisor—

Mr. ACKERMAN. He can sit at the table.

Mr. KOVAR. Thank you, Mr. Chairman.

I think the language was intended to deal with the situation where the prisoners are handed over to the companies for the companies to use them in factories or in their operations.

Mr. ACKERMAN. This is mind boggling. Are you saying that those who wrote this document to which people became signatories were concerned that prisoners not be handed over to companies to work directly for the companies, but that it was OK for them to work under the confines that we have heard described in which to me sounded like absolute torture, working conditions that no company that I know of, no commercial company would allow to take place.

I would think the production numbers that I heard described here as a person who originally came from private industry were far in excess of the numbers that I would think could be completed in any kind of factory with any kind of incentive program, let alone the difference between 3 and 4 cents an hour for 168 hours a month—it seems to me the working conditions in the prison were certainly not up to the standards of any commercial venture that they might have been sent out to.

I would think that the concern that we should have as civilized persons should be a concern of taking prisoners and putting them at the hands of some unscrupulous employer who is then going to subject them to substandard conditions. It would seem to me that that would be the humane thing to do here. These people would probably have been thrilled to have been hired out to some work house if you will, rather than the conditions in which they found themselves.

Am I missing something here? Is our concern just who signed the check?

Mr. KOVAR. Mr. Chairman, you raise a host of issues. I think the human rights issues have to be dealt with separately from the questions under Convention 29.

Mr. ACKERMAN. We have several sets of very complicated and serious issues here, the human rights aspects of it being one, the international treaties and agreements and the language therein being another, and the whole tariff and Customs and import aspect.

Mr. KOVAR. I think that if we take many of these issues separately, Convention 29 was aimed at forced labor, but not at prison labor except in those instances where the prisoners were actually handed over to companies for use.

Mr. ACKERMAN. But that would indicate that we were concerned about the prisoners, you didn't want to turn them over to somebody who was going to unscrupulously take advantage of them. The prisoners are now being taken advantage of in a manner that was probably far beyond what was contemplated by anybody to whom you would turn them over, that we have even a more serious violation.

My reading of this, where it says the person is not hired to or placed at the disposal of private individuals companies or associations, that indeed they are at their disposal. They have to make their products in accordance with their quality control requirements and standards, and in effect are being hired out to this company.

I don't know—maybe I should have thought of this business last year, but maybe we should have set up a hiring agency to hire out the nannies to those people who hired illegal nannies and made the claim they weren't working for the people that hired them, they were just working for the nanny farm and therefore nobody was guilty of anything.

But if everybody knows what is going on and everybody does because Japan has contracted with these companies, you are saying, we have seen the contracts. There is nothing hidden here except the Japanese people evidently don't know about it. The American people don't know about it.

It has come as a shock to this Congress and you have not known the extent of this evidently, there is something awful here, is there not?

Mr. HUBBARD. Mr. Chairman, at the risk of speaking for my lawyer, I believe we have examined and judged that the Japanese practice as we understand it does not violate the ILO Convention No. 29.

Mr. ACKERMAN. Has anybody consulted with the ILO?

Mr. KOVAR. No, but we have consulted with the Department of Labor.

Mr. ACKERMAN. The U.S. Department of Labor?

Mr. KOVAR. Yes, sir.

Mr. ACKERMAN. And they find this an acceptable practice?

Mr. KOVAR. They agreed with the view that the practice as we know it does not violate Convention No. 29 of the ILO.

Mr. ACKERMAN. When you say the practice as we know it, is that the practice as we know it this morning?

Mr. KOVAR. As Mr. Hubbard has described our understanding is that the prisoners—

Mr. ACKERMAN. How about as Mr. Lavinger has described, would the ILO find that of some concern?

Mr. KOVAR. I think the human rights condition situation I think is separate from the question under the convention. The convention only deals with whether the prisoners are under the supervision and control of the prison authorities.

I don't think we heard anything today that would suggest definitely that they are not under the supervision and control of the prison authorities. I think there were some questions raised that we thought we should look into about—

Mr. ACKERMAN. Do you think when they—I just don't see it as clearly as you do. Do you think that the framers from the ILO, which is the International Labor Organization, whose mission in this world is to somehow safeguard the rights of workers as I understand it, was concerned more about who supervised these people or the rights of the workers themselves?

Were they looking to protect the sanctity and security of the penal system of the signatories or to protect the rights of the workers? I think the answer to that without researching it, and I may be wrong—it just seems logical to me that the concern in this treaty is with the rights of the workers and not the rights of prisons. And that is why it says or placed at the disposal of dot-dot-dot companies, private companies.



Mr. KOVAR. Mr. Chairman, in our view, the issue of a treatment of prisoners is dealt with outside of this particular convention or the convention that the United States is a party to.

Mr. ACKERMAN. Is there any other international convention, statute, treaty, agreement that you know of that may be violated by this practice as was described here, assuming that that is the practice?

Mr. KOVAR. Mr. Chairman, I am not aware personally if there are conventions that aim directly at conditions in prisons. We could look into that for you.

Mr. ACKERMAN. Thank you.

We would appreciate very much if you would be able to, and we will, without objection—I hear no objection—keep the record open for the response to these and other questions that the committee and its members may have.

Are you familiar with the document that was referred to earlier put out by I believe the U.S. consulate, Guidelines to Americans?

Mr. HUBBARD. Yes, Mr. Chairman.

Mr. ACKERMAN. Were you familiar with that prior to this being called to your attention? Is this something that the State Department has known about, these guidelines?

Mr. HUBBARD. I was not personally aware. I assume our consular officials were aware of it. I have not dealt specifically myself with consular affairs recently.

Mr. ACKERMAN. The thing that is of great concern to me I guess on page 20, 9.6, it says work is obligatory—this is the U.S. consulate in Japan, that looks out for the rights of Americans to let them know what their rights are and protects them against anything untowards.

It says work is obligatory for inmates sentenced to imprisonment with forced labor which includes the bulk of the population at Fuchu. Then it goes on to flesh out, if you will, working 168 hours of work every 4 weeks, et cetera, et cetera.

In addition, vocational training, related work, prisoners do assembly work for outside contractors in various sections of the plant, et cetera, et cetera. All income received by the prison for the sale of goods produced by the inmates is treated as government revenue. This is told to American citizens by the American consulate, very matter of factly in this document.

I would think that most Americans who find themselves in that very uncomfortable position of having committed a crime or being convicted of a crime in Japan are being told by their embassy that this is normal and this is what to expect. I would think and hope that most people haven't gone through this more than once, and therefore would just come to the conclusion that whatever it was that they did that was wrong, that they are going to be punished for, that this is par for the course and is acceptable because they are being told it matter of factly by their government and, therefore, would probably think of no reason to ever complain about the conditions or the uncomfortable position that they found themselves in.

Is that not a logical conclusion? If I received this from my authority, my protector in some foreign country, I would say well, that is par for the course, I am getting what I am supposed to get

and it is all legal and real and too bad for me, but I should be comfortable about it because it is normal.

Would I be wrong in making that assumption?

Mr. HUBBARD. Mr. Chairman, this booklet is an attempt to be helpful to prisoners, an attempt to let them know what they can expect and to give modest advice as to——

Mr. ACKERMAN. If they were told they were going to have their left foot cutoff, they would be more comfortable with it because they would expect it.

Mr. HUBBARD. We have already said that we do not consider the prison work program run by the Japanese prisons as we understand it to violate any international conventions——

Mr. ACKERMAN. As you have understood up until today?

Mr. HUBBARD. As we have understood it, nor does it violate any bilateral agreement unless goods are exported to the United States. So indeed we have as part of a booklet in which we give helpful language tips, other helpful hints, we have tried to let the prisoners know what they can expect in a Japanese prison.

We have not understood that system to violate any international convention nor to violate our basic standards of human rights as agreed to under the universal declaration.

Mr. ACKERMAN. Let me understand this. Torture to make people more compliant, to work within a forced labor situation where human rights may be violated is OK as long as the goods produced aren't sent to the United States?

Mr. HUBBARD. Mr. Chairman, Mr. Lavinger is the first American prisoner we know of to complain about working in Japanese prisons.

Mr. ACKERMAN. Why would anybody complain? You are telling them, the embassy, the consulate, is telling them that they should expect this. If my mother said "Don't do this or I am going to spank you," and I did it and she spanked me, I shouldn't complain about being spanked because I was told what to expect. That is part of growing up.

Mr. HUBBARD. Mr. Lavinger has made allegations today about his treatment within the prison that as far as we can determine, he did not make while he was imprisoned nor had he made up until today since he was released.

Mr. ACKERMAN. That is the point. Why would he complain about something that you told him to expect? If you told him that this is what he is to expect regardless of what you told him and that you were aware of it—the embassy is aware of it, that the U.S. Government is aware of it and knows about it and the U.S. Government thinks it is OK because it doesn't say let us know immediately if you are forced to do this or that or the other thing, why would they complain about it if you are telling him this is standard operating procedure, this is SOP.

I even have a document with the great shield of the United States on it. This is what our country is telling you to expect. This is the seal of approval here. This is saying this is what there is and this is what you are going to get. Why would I then complain of getting what you told me I was going to get?

Mr. HUBBARD. Mr. Lavinger was convicted of a crime in Japan. He was subjected to the judicial system and the punishments ap-

plied in Japan. The duty of the embassy is to ensure that this American is given all due treatment that he is owed as an individual under Japanese law and in accord with any of our bilateral agreement.

If I could take the opportunity to correct one aspect of the——

Mr. ACKERMAN. Let me——

Mr. HUBBARD. Mr. Chairman, could I ask Mr. Lavinger, if he is still in the room, to give me a waiver of his privacy on one aspect of the statement he made this morning?

Mr. ACKERMAN. Do you want to ask him to do that presently?

Mr. HUBBARD. I would like to answer his allegations about when and how the American consulate was notified of his arrest and when he was visited.

Mr. ACKERMAN. I will allow you to ask that of Mr. Lavinger's counsel.

COUNSEL FOR MR. LAVINGER. I would only say, Mr. Chairman, how that is not germane to the issue of prison labor and the treatment——

Mr. ACKERMAN. We don't have a trial here so germane has nothing to do with the U.S. Congress.

COUNSEL FOR MR. LAVINGER. I find no problem with him asking the question. If he wants to answer it, by all means, Mr. Hubbard, please.

Mr. ACKERMAN. State your question.

Mr. HUBBARD. It is not a question. It is a statement. Mr. Lavinger alleged that our consulate was not informed of his arrest until his family or friends in the United States informed them. He also alleged he wasn't visited until 2 days later. Our records show that the consulate general in Osaka was informed by the Osaka Water Police of his arrest on the day of his arrest on November 13 and that our consul did visit him on the following day on the 14th.

Mr. ACKERMAN. OK. You have placed that in the record. If there is any response to that, we will be glad to hear it or place it as well.

If I can go on to a different point here, this is the—I don't think I have to place this in the record, but this is already an official document. This is the Country Report on Human Rights Practices for 1993, and you are familiar—more familiar with it than I am, I would suspect.

But within this, 1993, which is the latest edition of this report, the State Department provided Chairman Lantos' subcommittee in February of this year, 1994, the following, page 658 of the document in the Japan portion, and I am referring to Section 6 entitled "Workers Rights," Paragraph C reads: Prohibition on forced or compulsory labor, "the labor standards law prohibits the use of forced labor and there are no known cases of forced or compulsory labor."

This section of the report is produced, suggested I think, by our embassy personnel in Tokyo, is that accurate?

Mr. HUBBARD. That is correct.

Mr. ACKERMAN. How can we have a document that says that there are no known cases of forced or compulsory labor in Japan when quite knowingly we do?

Mr. HUBBARD. Mr. Chairman, I wouldn't want to try to put——

Mr. ACKERMAN. Mr. Lantos was caught by surprise, my subcommittee and myself have been caught by surprise. We have relied heavily over the years on these documents. When it says no known cases of something happening in this or that country, we rely heavily upon the State Department and our embassies and consular offices to the best of their ability to come up with this kind of information.

I know Japan is a very important ally and the time is very delicate right now, but nonetheless if the embassy is saying on one hand that there are no known cases—of forced or compulsory labor on the one hand in this document given to the Congress, and then turns around and gives to 40 Americans at any given time in Japan, Mr. Lavinger being one of them, a different document saying yes, you do have forced compulsory labor, and the words come right out of the other report, that you will be forced to have forced labor, compulsory labor, and it is the same embassy that is saying these things, I don't think it is consistent.

Why wasn't the Congress informed in this country report that indeed there is forced labor in Japan? Why did we have to wait until one singular solitary frightened American said "Hey, I think I got a bad deal? I did something wrong, but I think there is something wrong here."

Why did he have to bring it to our attention and not the embassy that there is forced labor? The embassy could say "There is forced labor, but we should tolerate it." Because someone has different customs, we could tolerate it?

Mr. HUBBARD. Mr. Chairman, neither of the documents we are talking about here, the Human Rights Report or the Guidelines for Prisoners, are legal documents and perhaps the embassy and the Department—

Mr. ACKERMAN. I am sorry.

Mr. HUBBARD. Neither are legal documents.

Mr. ACKERMAN. The chief of staff of the subcommittee is calling to my attention that the forward to this document says the country report on human rights practices contained herein was prepared by the Department of State in accordance with Section 116(d) and 502(b), Subsection B of the Foreign Assistance Act of 1961 as amended.

They also fulfill the legislative requirements of Section 505(c) of the Trade Act of 1974 as amended. The reports cover the human rights practices of all nations and—

Mr. HUBBARD. Mr. Chairman, I used the wrong word, neither of these documents was prepared by lawyers as part of legislation or as part of a contract and perhaps the words chosen were not as precise as they should have been.

We believe that the human rights report was construing the concept of forced labor in the same manner that the ILO convention did; that is, that in our minds, we were exempting prison labor from the concept of forced labor as written in there.

The embassy guidelines used the word forced labor. In fact, sir, I think that was the wrong word. We will take a look at both documents and make sure that they both reflect a better standard of language.

Mr. ACKERMAN. Bear with us a moment.

Mr. HUBBARD. Yes.

Mr. ACKERMAN. In the document, in other countries such as China, I refer to the same document, the countries report where it refers to China, and it says that there is forced labor, does that mean that there is forced labor outside of the prison system, or does that refer to the prison system?

Mr. HUBBARD. I don't know, Mr. Chairman. I didn't play a role in writing the section at the time.

Mr. ACKERMAN. On page 618 of the same document—I am not going to back peddle to get chapter and verse—it is China. On page 618, something called Paragraph (c) at least, small c on that page for shorthand purposes right now says "Prohibition of Forced or Compulsory Labor: The Chinese penal policy emphasizes reform first, production second, but compulsory labor is an integral part of the system, both to rehabilitate prisoners and to help support the facilities. Almost all persons the courts sentence to prison, including political prisoners, are required to work, usually for little or no compensation."

Why do you call that to our attention with respect to China and fail to call it to our attention with respect to Japan and claim that in the case of Japan you only interpret it as meaning other kinds of forced labor and not prison forced labor? Do we have one standard for China and a different standard for Japan?

Do we have a different set of definitions of forced compulsory labor for countries that are allies than other countries with whom we are trying to deal and shape up? It seems to me that there is a basic inconsistency here with our human rights standards in different countries and with the way that this is being reported and presented to Congress.

It seems to me, and I can't speak for all members of the committee, but when we talk about prison labor the—forced labor, the first thing that comes to mind is China and we are told basically by this document that it is basically reprehensible that China has forced labor and the citation is always in the prisons.

I haven't read this whole book, believe me. I am not going to read it, but certainly some sections I am familiar with and it doesn't say anything—well, it is just disappointing to say the least to find one set of standards with regard to prison labor in China where it is important to call that to the attention of the Congress that China is a human rights violator, because that is how they wind up in this book, and that in Japan they become clearly exonerated by saying there are no known cases of forced labor or compulsory labor in Japan which is not so; am I right?

Can you tell me if I am wrong? Please tell me I am wrong.

Mr. HUBBARD. Mr. Chairman, I cannot speak for the China report because I don't handle China and I have not read that report. What I can say is that we do have the same standard, we should have the same standard.

I will see that as we produce these reports next year that the same standard is reflected and I will try to get back to you on this question.

Mr. ACKERMAN. At the risk of being repetitive, because this is ever so important, the Members of Congress, and that includes most if not all who are very concerned about human rights and

human rights violations, read some parts of this very, very extensive report and take it very, very seriously and we base our foreign policy to a large extent on the things that we are being told.

Clearly, we have been outraged and that outrage has been very, very public from many Members of the Congress, and reflects the American public's views of things concerning forced labor in China as a concern and a violation. Then we turn to the Japan section and we are told—it is not just ignored but it is stated very specifically as I quoted that there are no known cases, that we assume that the same criteria of no known cases of forced labor means the same thing on page 618 as it may mean on whatever the other page was in Japan.

We can't change the definition as we turn the pages. Now, this calls into being the credibility of the rest of the definitions in these country reports. Are we to assume that maybe this is just a hopefully just one example of something gone wrong and there is nothing else in here, but in those other countries with whom we are allied and with whom we are partners, friends, that where it says they have no violations and we applied a different standard of the definition of violations, whether it be a forced compulsory labor or anything else that we are looking at.

I know that we excuse the blemishes on those whom we love and tends to overlook those things, but you know, we need some more factual information without the sands shifting underneath us.

Could I ask you, on behalf of all of our committee, to look into this, because clearly there is a definitional problem here and the definition shifts, which is problematic.

Well, I think we all have a lot of work to do based on the information that has been brought forth today and I don't envy you your task, Mr. Hubbard, in trying to get on of some of the issues that have been raised here. I know that they have come as much as a surprise to you as they have to me as this hearing has developed. Neither us nor anybody on the committee can anticipate some of these things coming up and having the answers at our fingertips now.

Let's go back to our respective responsibilities and see what we can do to make sense out of this and to fix it and to make it better so that indeed no American and no citizen of any nation has to suffer the kinds of indignities that have been described here and to find out indeed if there have been violations either of U.S. statutes, rules, our intentions and if indeed some of these happened then the wording or language of some of the treaties or organizations are being bent or misconstrued and whether or not we should rechart the language in some of these documents.

I thank you very much for your appearance here and you have been very, very forthright and very, very helpful to us, and the committees look forward to working with you on fathoming this thing out, working on behalf of the American people to fix whatever it is that indeed might be wrong.

Before concluding the hearing, let me personally on behalf of the members of our Foreign Affairs Committee thank Mr. Alex Kirkpatrick for the exemplary service that he has provided from the Bureau of Legislative Affairs at the State Department, and the work he has done on behalf of the American people.

We are all here on our side of the government greatly appreciative of your contribution and we wish you and your bride and your entire family well in relocating and in your new endeavors. Congratulations.

These committees will stand adjourned.

[Whereupon, at 2:45 p.m., the subcommittees were adjourned.]





# APPENDIX

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## STATEMENT OF CHRISTOPHER DAVID LAVINGER

JUNE 15, 1994

Members of the domestic and international press, distinguished Members of Congress, . . . ladies and gentlemen: Before I begin my statement, I would like to say that I am usually not long-winded, but if you will bear with me through this statement, I will be happy to answer your questions.

My name is Christopher David Lavinger. I am twenty-eight years of age. I am a citizen of the United States of America.

On November 11, 1991, I was arrested in Osaka, Japan, for possession of small amounts of controlled substances. On that date, I was taken to the Osaka Water Police Station, where I was interrogated for fourteen hours a day, seven days a week, for thirty-five straight days. While being interrogated, the Japanese officials questioning me told that the Embassy did not want to come and see me because they "did not have the time."

Eventually, I was indicted, and, on December 18, 1991, I was transferred from Osaka Water Police custody to the Osaka House of Detention, termed by the Japanese a "prefectural" pre-trial detention facility.

After two and one-half months in solitary confinement, my trial began. (Many in Japan wait considerable periods for their trials -- the trial of one inmate with whom I spoke took five years.) The prosecutor recommended that I be sentenced to forced labor for 42 months in a maximum security facility. The court sentenced me to serve 22 months at

Japan's forced labor maximum security facility for foreigners -- Fuchu Prison in Tokyo.

I was given two weeks in which to decide whether to appeal my sentence. The 'penalty' for appealing one's conviction and/or sentence is that the time served until the appeal is decided will not be applied toward any eventual sentence. Appeals take months to be heard, and can take years to be decided.

My sentence officially began on March 12, 1992.

On March 18, 1992, I was moved from the 'pre-convicted' wing at the Osaka House of Detention to the 'convicted' wing. Since there was no available cell at Fuchu Prison, I would begin serving my sentence at the Osaka House of Detention. While I waited for transfer, in a solitary confinement cell, I was forced to produce clothespins. This was the first time I was forced to produce goods for the Japanese. During my one month stay in this 'convicted' wing, I made 78,500 clothespins. It has come to my attention that it is probably unlikely that an advanced society such as Japan would need clothespins in the numbers being produced, and it may be, therefore, that I was making goods for export. I do not know for sure.

On April 16, 1992, I was sent to Fuchu Prison, outside of Tokyo. At about this time, I was supplied with a booklet, *written by the United States Mission to Japan, and given to me by the United States Embassy in Tokyo*. The booklet was titled Guidelines For Americans

Arrested in Japan. According to this booklet, it is obligatory for all prisoners to perform "assembly work for outside contractors," and that the "income received by the prison for the sale of goods produced by the inmates is treated as government revenue."

I was incarcerated in Fuchu Prison with approximately 14 other Americans, as well as citizens of Great Britain, France, Australia, Israel, Belgium, Norway, Austria, Canada, Spain, China, Malaysia, Thailand, Columbia, Peru, Pakistan, India, Nepal, Bangladesh, Vietnam, Nigeria, Iran, and Brazil, among others. In all, over 30 countries were represented, bringing the foreign population at Fuchu Prison to nearly 250 inmates. There were also Koreans, probably a significant number, incarcerated in a different facility. I believe their segregation from all other prisoners to be due to the deep-rooted hostility between the two nations.

Initially, I was placed in a solitary confinement cell-block at Fuchu where I was put to work making high-quality paper shopping bags. These bags had logos and designs of private companies, including: **Burberry's of London**, **Mizuno Sporting Goods**, **Daimaru Department Stores** and **Mitsukoshi Department Stores**, among numerous others. I was held in this solitary confinement wing/paper bag factory for approximately one month.

Following this one month in the paper bag factory, I was transferred to another solitary cell. Each day I was taken from that cell to work in an outside factory -- Training Factory Number 24. In lectures conducted by high ranking prison officials in this factory,

it was explained that it was mandatory that I, and my fellow 2,500 prisoners, work in the 24 factories dedicated to the production of goods for private commercial companies. I was told, further, that the Japanese government had contracted out the prisoners' labor, and that I would be put to work in one of the 24 factories, producing, among other things, items such as: toys; ladies shoes, handbags and other leather goods; electronic parts; smoke detectors; auto parts; furniture; ceramics; umbrellas; and, heavy construction equipment. It was during these lectures that I was 'taught' how to walk and how to military march correctly, how to speak, eat, sit, sleep, and how to beg for forgiveness.

Under the threat of cruel physical and mental punishment, I was then compelled to produce goods bearing the names of many private companies, including: SEGA Electronics, Burberry's of London, Mizuno Sporting Goods, Mitsukoshi Department Stores, Daimaru Department Stores, and Walther Firearms.

I was told that if I did not fulfill my obligation to perform the required labor for these companies, I would be subjected to physical beatings, incarceration in a punishment room called a *chobatsu* cell -- for a minimum of seven days, loss of 'good' time, reduction of my daily food rations, loss of 'privileges' -- such as using the toilet, moving my body, reading, receiving letters and physical exercise. Failure to comply with nearly every rule, major or minor, resulted in interrogation and punishment, and was considered intentionally removing oneself from work -- work the prisoner owes to the Japanese government.

The *chobatsu* cell is a solitary confinement cell that consists of a hard wooden box, on which the prisoner must sit, at attention, ankles and knees together, back arched, elbows in, palms flat on lap, staring straight ahead, at a white wall -- motionless -- from 6:55 AM until 6:00 PM. During this time, a prisoner may not get out of this position for any reason. A bell sounds only twice during this interval to allow the prisoner to use the toilet. Any violation of *chobatsu* rules results in additional weeks in the punishment cell. All exercise is strictly prohibited in the *chobatsu* cell. Any refusal or further non-compliance with *chobatsu* rules will result in the use of "the harness." The harness is a belt that straps around the waist and binds the left wrist in, toward the stomach, and the right wrist around the back, and in, toward the spine. A prisoner must eat, sleep and use the toilet while bound in this harness. I personally witnessed severely scarred and malnourished prisoners -- victims of the harness for consecutive periods ranging from weeks to months. Many prisoners placed in the harness would simply 'disappear.'

I was transferred from Factory Number 24 to Factory Number 5. I was immediately taught how to make electronic and other internal components for toys, games, and small electronic devices.

The following is some of what I was forced to do.

- 1) I made children's ski poles and skis for a product called "Super Ski." Later, I was told to affix American flag stickers to the poles. In three months, I, alone, made

120,000 ski poles. Significantly, this product was labelled in English. Goods in Japanese stores are nearly always labelled in Japanese, indicating that these goods marked in English were likely bound for foreign markets.

2) I assembled thousands of *Pachinko* (Japanese pinball) machines.

3) I produced thousands of toy golf sets, called "Super Mini Golf."

4) I clipped hundreds of thousands of tiny plastic toy and game parts from sheets on which they had been molded. I have no idea what these parts were, but, as I said, they appeared to be toy parts.

5) I assembled tens of thousands of electrical contact switches for toys.

6) I made thousands of Walther "P-38" water guns during the summer months.

Ironically, I was not even allowed to have a drink of water in the 90 degree Japanese summer heat, while making these water guns.

7) I used a special tool to bend hundreds of thousands of tiny copper parts for future use. I do not know what these were.

8) I assembled thousands of Godzilla v. Mothra mini-pinball machines.

9) I assembled thousands of mini slot machines.

10) I assembled thousands of whiffle ball and bat sets.

Upon finishing my specific task, I passed these products on to other prisoners for completion. Upon their completion, I observed these other prisoners packaging the products into cardboard boxes for store displays, and then, in turn, into larger boxes for shipping. These boxes were stacked in a transit area of my factory for shipment outside the prison.

I regularly saw boxes in my factory -- filled with raw materials -- and labelled "MADE IN CHINA" and "MADE IN TAIWAN." The finished products would then be shipped out in boxes labelled "MADE IN JAPAN" or 'mislabelled' "MADE IN CHINA" or "MADE IN TAIWAN." Furthermore, there were hundreds of boxes which bore the logo of SEGA Electronics.

At other times, I would take raw materials from the Chinese or Taiwanese boxes, enhance them, and then pass them on to other prisoners to be packaged in boxes labelled "MADE IN JAPAN," "MADE IN CHINA" or, "MADE IN TAIWAN." Every day there were quality control experts that would tour the factories and supervise the production of goods. These quality control experts were not guards -- they had no handcuffs or billy clubs. However, they did have keys to the prison and came and went as they pleased. They wore civilian clothing, and a special hat which distinguished them from the prisoners. Prisoners wore ripped, dirty grey uniforms.

As we were told by the guards, and previously during lectures, the factories were, in fact, toured by suited executives of the companies that contracted for our labor, as well as executives from companies seeking to contract for our labor. These tours took place at least twice per month.

I learned only after my release that the Japanese government established a company by the name of CAPIC -- C-A-P-I-C -- to act as a subcontractor, through which other,

private, companies contracted for the prisoners' forced labor.

I was, in all respects, a slave of the Japanese government and the private companies that contracted with it -- compelled to produce goods under the constant threat of physical and mental torture, including: beatings, reduction of food rations, solitary confinement, loss of parole, harnessing, and interrogations until 'voluntary confessions' were signed. I was placed under the control of guards and prison officials with nearly unlimited authority to punish actual or fabricated breaches of rules. Intensive interrogations resulted from rule breaches as minor as the accidental breaking of one's hanger, to allowing one's notebook paper to rip.

I witnessed guards beating prisoners. When these beatings occurred, all prisoners were ordered to either *migi mukai migi* or *hidari mukai hidari* (right face or left face) meaning turning away from the beating and then to *mega shiro* (close eyes) so as not to witness the beating which takes place -- frequently with electrified, extendable metal poles.

From July 7, 1992, until July 13, 1992, I served a sentence of seven days in a *chobatsu* punishment cell for the offense of giving my telephone number to an American that was being released. I asked the American to call my family and tell them what it was really like in the prison (all letters, whether to family or U.S. consul were censored), that I was doing alright, and that I loved them. This offense was punishable by seven days in *chobatsu*. Halfway through my *chobatsu*, I was given a large, two sided piece of paper and told to fill



it with a written explanation of why what I did was wrong. If I did not write the self-accusatory essay, I would not be considered for release from the *chobatsu* cell. I wrote it.

While I served my *chobatsu* punishment from July 7, 1992, until July 13, 1992, the temperature outside, and inside, was near ninety degrees Fahrenheit. I was forced to sit on a wooden box, at attention, ankles and knees together, back arched, elbows in, palms flat on lap, staring straight ahead, at a white wall -- motionless -- for eleven hours a day. I had to wear full cold weather clothing, including long john underwear on top and bottom, three-quarter long johns over the full-length long johns, a tee shirt, underwear, socks, long pants, a long sleeve button-down shirt -- completely buttoned up to the neck and arms, an acrylic vest, and a long sleeve jacket -- also buttoned completely to the top. During this punishment in *chobatsu*, the prison authorities also decreased my daily food ration.

I was released one day early from *chobatsu* for good behavior. Upon release from the *chobatsu* cell, I was taken to a doctor who asked if there was anything wrong with me. I told the doctor that my back was "black and blue" because the "back rest" (which does not allow any type of rest) on the wooden box had dug into my lower spine and back. I also told him that there was terrible swelling in my left ankle, which also was "black and blue." The doctor, without even looking up at me, told the guard escorting me to return me to my factory so I could go back to work.

Notably, requests for medical care of any kind were ignored or punished -- from

simple requests for aspirin, for dental care for cavities, even for treatment of cancer. On one occasion, a Norwegian was injured by a hanger that ripped his nose open. I was standing next to him when this happened, and notified the guard immediately, as he was bleeding profusely. The guard ignored the injury, and ordered us both to line-up -- refusing to allow treatment. The Norwegian soon collapsed and went into a seizure, while in line-up. He was taken away and forced to sign a "voluntary confession" accepting responsibility for the incident.

During my incarceration, I wrote to the United States Consul asking that a severely painful cavity be treated, complaining that a guard was 'feeling me up' when he frisked me, and that I frequently encountered prison guards who were aware that I was Jewish, and who would regularly salute me with Nazi salutes, saying "Heil Hitler." Swastikas and Jewish stars were frequently drawn on my shampoo bottle (shampoo is a luxury which I was afforded only after eight months of incarceration.) In the vast scheme of things, however, this was a minor problem. In response to the letter, I was brought to interrogation and asked to rip it up 'voluntarily,' and sign a statement saying that I destroyed it of my own free will. My other option was to send the letter, but if I did, I was told I would get no parole. I was, for all practical purposes, not allowed to communicate freely, even with my own embassy.

One of the more egregious religious violations, though, was of a rastafarian, who refused to have his hair cut because it is contrary to his religion. He was put in a solitary cell, making paper shopping bags, to serve out his three year sentence -- with no parole.

Personal tragedies could result in punishment as well. The mother of a British citizen died while her son was in Fuchu Prison. His crying resulted in interrogation and *chobatsu*. When he was found crying again, he was placed on Thorazine -- chlorpromazine -- a very strong tranquilizer, used to control psychotic behavior, and generally reserved for in-patient psychiatric treatment. When found crying thereafter, he was subjected to further punishment -- more *chobatsu*. This incident was of particular concern to me, as my mother was, for the entire time of my incarceration, dying of Stage III - Stage IV metastatic cancer spread throughout her abdomen and chest. In the summer of 1991, her doctors gave her three to six months to live. There were many times I believed that my mother had died, but that my family did not tell me, out of concern for my well being. Through some miracle, my mother survived to see me return from Japan, though she died soon after I was released.

During my entire sixteen months of incarceration, I was kept in solitary isolation, and was subjected to twenty-four hour light. I was taken out of solitary only to work in a factory. I was not permitted to talk or even look at another prisoner while at work, except for about ten minutes per day. Guards would walk up and down the aisles of work-tables and watch for any movement of heads or any talking for which they could send a prisoner to punishment.

During work time, a prisoner is not permitted to talk or *wakimi* (look around) or look at a guard, to stand up, or even to use the toilet without permission. Permission was rarely granted. Along with the other prisoners, I was subject to serious punishments for

*wakimi* or for looking at a guard. The Japanese believe that if a prisoner looks up from his work, he may accidentally injure himself, and by so doing, intentionally remove himself from working on the production line -- work he owes to the private companies to which the Japanese government contracted out his labor.

Further, the first Monday of each new month was called Green Cross Day. On this day it was forbidden to accidently injure yourself at work, or in the cell. Accidental injuries were, on a regular basis, investigated and frequently punished with *chobatsu*. On Green Cross day, an accidental injury would earn *chobatsu* punishment without the opportunity of interrogation. Again, it is standard that interrogations continue until a confession is achieved. Interrogations can last for months -- even for the most minor of infractions.

For all of the foregoing I was remunerated approximately three cents per hour for working eight and one-half hours per day, five and one-half days per week. Basic necessities, meanwhile, could be purchased from prison supply, but the wages were usually insufficient to do so. If I have not clearly stated this yet, I will do so now: If not for the threats of *chobatsu*, harnessing, and the other physical and mental tortures I have mentioned, as well as the loss of parole, I most certainly would not have agreed to any of the labor I have described. As horrible as it was to be forced to work, the conditions under which I was enslaved made the experience exponentially worse.

It is my hope that the Community of Nations will stop this egregious practice and

come to the aid of those prisoners still incarcerated in Japan, and suffering these violations of their humanity and dignity on a daily basis.

For myself, I have had flashbacks which, at times, have been very severe. I have difficulty sleeping, and horrible nightmares when I finally do sleep. I have trouble talking with people, and prefer to be left completely alone. I have feelings of worthlessness which I attribute directly to the treatment I received in Fuchu Prison.

Appended to this written statement you will find an outline of the daily prisoner schedule of Fuchu Prison, as well as drawings, taken from a Japanese book, entitled Illustrated Diary, by Hiroshi Nonaka, and published by Nippon Hyoronsha (1988).

In many respects, this long statement is too brief to convey my experience and I look forward to answering any questions you might have.

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Christopher David Lavinger

The following is an outline of the daily schedule in Fuchu Prison, to which I was forced to abide.

- 6:45 AM     Wake up bell.
- 6:55 AM     Roll call. At this time, each prisoner must stand at military attention, completely silent and still, while he awaits a guard's command to speak his number in Japanese. If the prisoner makes a mistake or violates any of these rules, he will be taken to *tore sherabe* (interrogation) and then to a *chobatsu* cell for a minimum of one week. In interrogation, a prisoner is interrogated until the officials obtain a confession. When not actually being interrogated, the prisoner is under investigation makes shopping bags in isolation.
- 7:00 AM     Breakfast is served. Absolute silence is mandated. Once the meal is eaten, the dishes must be washed clean regardless of whether there is any soap to clean them.
- 7:15 AM     Breakfast is finished.
- 7:25 AM     Prisoners are let out of their cells and must stand, absolutely silent, until a guard shouts the command *mawari migi* (about face). Groups of prisoners are then marched, military style, down the stairs in labor gangs, where smaller groups join a long line of prisoners. The long line of prisoners is then marched to the factories. A prisoner may not make

any mistake in his marching, may not ever look in any direction other than that of the head in front of him. Again, the rule is absolute silence.

7:40 AM Arrive at work. Once in the changing room, a prisoner is not permitted to talk or even to look at another prisoner. Talking at this time results in investigation and punishment.

7:55 AM Work begins. During work time, a prisoner is not permitted to talk or *wakimi* (look around), stand up, or use the toilet without permission. Permission is rarely granted. The guards say that they are there to watch us and not the other way around. Very serious punishments are given to those who *wakimi* or look at a guard. The logic here is that if a prisoner looks up from his work, he may accidentally injure himself, and by so doing, he will intentionally remove himself from working on the production line -- something he owes to the private companies to which the Japanese government contracted out his labor.

9:45 AM Tea break. Approximately seven minutes are allotted to talk to other prisoners in the factory -- if the guard is in a good mood. Often the breaks can be as short as four minutes, or not at all.

9:55 AM Back to work.

12:00 PM Lunch. Absolute silence is required during all meals. Deviation from this rule will result in immediate *chobatsu* punishment for at least the minimum of one week.

- 12:20 PM Lunch is finished. Back to work.
- 2:30 PM Tea break. Same amount of time as earlier tea break.
- 2:40 PM Back to work.
- 4:30 PM Work ends. To changing room. Absolute silence must be maintained.
- 4:45 PM Prisoners are marched, military style, back to the cell block where the foreigners live in isolation from other prisoners and in solitary confinement. That is, all foreigners live in solitary isolation cells for their entire sentence. The usual rules for marching apply now, more than ever, because the high ranking prison officials come out to watch the marching.
- 5:00 PM Roll call. The same rules apply now as for the morning roll call.
- 5:10 PM Dinner is served. Dishes must be washed clean as for other meals, and are collected by 5:40 PM.
- 6:00 PM At this time, a bell chimes which means that it is permitted to unroll the prison-supplied futon, and the prisoner is then, for the first time that day, permitted to lay down on this thin mattress on the floor. At no time, even during the coldest winter nights or days, was my cell or the factory provided with any heat. At no time, even during the sweltering, humid Japanese summer, was there any air-conditioning. A prisoner may use this time to write letters (two letters, not exceeding seven pages per month are permitted), sew a button, read a book, etc. From 6:00 to 9:00 PM, the radio would be played but turned off at



exactly 9:00 PM. Absolute silence must be maintained during this period.

9:00 PM     A bell rings which means that the prisoner must be in a prescribed position on his back, silent, and must not get up for any reason other than to use the toilet. Very severe punishments are given to those who violate room rules. Prisoners must stay in this position while sleeping -- and may not roll over, turn sideways, or move the covers over their head or the prisoner will be wakened and told to sleep on his back.

STATEMENT OF RICHARD D. ATKINS, ESQUIRE  
BEFORE UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON FOREIGN AFFAIRS  
SUBCOMMITTEE ON ASIA AND THE PACIFIC  
CHAIRMAN GARY L. ACKERMAN

My name is Richard D. Atkins and I am an attorney and co-founder of International Legal Defense Counsel (ILDC) in Philadelphia, Pennsylvania. For approximately 15 years, our firm has primarily represented Americans in foreign countries who are facing legal problems, either of a criminal or civil nature. ILDC has been in the forefront in the promulgation and use of International Prisoner Transfer Treaties. We are also involved in other aspects of foreign criminal justice systems, including prison treatment issues which involve U.S. citizens. We have written numerous booklets and articles on these subjects.

I am also the Chairman of the Criminal Law Committee (SGP) of the International Bar Association, the worldwide lawyers group which is headquartered in London, England. The IBA, including my committee, has attorney members in virtually every country. We arrange major conferences and international criminal law seminars, provide assistance to emerging Bar Associations in developing countries, and we provide input into international criminal policy making organizations, including the United Nations.

In that regard, for the past dozen years, I have participated in criminal-justice foreign prison projects at the United Nations, through the NGO (Non Governmental Organization) Alliance on Crime Prevention and Criminal Justice. This NGO

Alliance supports the Crime Branch of the United Nations in Vienna, Austria.

I am a member of a Working Party at the Alliance which is in the process of preparing updated minimum standards for the treatment of foreign nationals who are incarcerated in prisons worldwide.

Specifically, for that U.N. project, we are writing the manual on International Prisoner Transfer which is to be presented at the U.N. Crime Prevention and Criminal Justice Congress which is scheduled to be held in Tunisia at the end of April and beginning of May 1995.

I have been a member of the American Correctional Association, (ACA) for the past sixteen years. I am on the ACA International Relations Committee, and chair of the Subcommittee on International Prisoner Transfer. In that capacity, I author reports to the ACA twice a year concerning Prisoner Transfer Treaties worldwide. I testified several times before the U.S. Senate Foreign Relations Committee concerning international prison issues relating to Americans incarcerated abroad.

Because this hearing has been arranged so quickly, I have not had the opportunity to consult with the organizations and agencies with which I am connected, and therefore these remarks are my own.

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10, 1948. Article 6 clearly states "No one shall be held in slavery and the slave

trade shall be prohibited in all their forms."

The Declaration's history shows that systems of forced compulsory or convict labor were considered by the drafters to be forms of slavery or servitude, and as such are included among the prohibited practices.

It is clear that forcing foreign nationals to work under circumstances which involve involuntarily servitude is a violation of human right concepts and in violation of the United Nations Universal Declaration of Human Rights. Selling these products, made under those circumstances, in international trade, certainly does not ameliorate the violations.

We have known of the long-standing situation in China involving the use of Chinese prison labor to produce products which were then exported internationally, including to the United States. However, we know of no reported instances of the Chinese forcing foreign nationals including U.S. citizens, to perform "slave labor" in their prisons.

We realize that it is difficult for most Asian - Pacific countries with different economic and social structures than Europe or America to make quick improvements toward human rights, including prison conditions, such as the work situation in prisons. This is particularly true with emerging nations.

However, Japan is one of the most developed, indeed a leading industrial nation, and the largest exporter of goods to the U.S. Japan, unlike China, does not have any arguable need to rely on prison labor to help its economy. While the amount of exports

made by foreign prisoners there is not fully known, it should not exist at all. We cannot think of any legitimate reason for Japan to use foreign prison labor to produce goods which are exported to other countries. We hope that the United States and other affected nations consider the ramifications of this Japanese policy and do everything possible to convince the Japanese Government to eradicate it as quickly as possible.

Allowing the use of "slave labor" to produce goods for the United States market is just not acceptable from a human rights, let alone, an economic perspective.

On April 25, 1994, United States Labor Secretary Robert Reich suggested that all countries should follow "core" labor standards such as renouncing prison labor; stating that "some labor practices simply place countries outside the community of civilized nations." This practice of Japan was most likely unknown to Secretary Reich at that time, and most probably, it would have been specifically denounced as a human rights violation.

Aside from the substantial economic and human rights problems with this practice, it is also a federal criminal violation under Section 1761 of Title 18 of the United States Code. That section makes it illegal for anyone to knowingly transport from any foreign country (or in interstate commerce) any goods manufactured or produced by prisoners. There is a two year maximum imprisonment and a \$50,000 fine for a violation of this law.

In the United States, most correctional facilities housing long term offenders have work programs. The basic work is

maintaining the facilities, food service, laundry etc. . . . For this type of work, inmates may receive some, often very little monetary compensation.

The next formal tier is the traditional Industries program where the inmates produce goods for an intra-state market, with sales restricted to governmental agencies and municipalities, some tax-exempts, educational systems and of course the Department of Corrections itself, which in large states is often the best customer. These goods and services usually include clothing, bedding, shoes, furniture, printing, signs and the traditional product, license plates.

Several federal laws substantially restrict prison made goods from sale and transportation in interstate commerce. The Sumners-Ashurst Act (18 U.S.C. 1761, - 1948) provides for a \$1,000 fine and one year imprisonment, and the Walsh-Healey Act (41 U.S.C. 35-45, - 1936) makes it illegal to use prison labor to fulfill federal contracts which exceed \$10,000.

The most sophisticated level of prison industry programs is the P.I.E. This Prison Industry Enhancement Program (authorized in Public Law 98-473) allows private industry to actually operate inside a prison under strict controls. This was originally worked out by Senator Percy (R - Ill.) and Senator Kennedy (D - Mass.).

This prison industry program requires payment of the prevailing wages, and provides for deductions of federal and state taxes, social security (F.I.C.A.), reasonable deductions for room and board, and mandatory contributions to a Victims Compensation

Fund (5%-20% of gross wages) plus mandatory savings for the prisoner. The savings usually involve family support or education payments, and the total deductions may not exceed 80% of the gross wages. Thus, only when meeting the strictest requirements, plus paying a full wage, can prison industries then sell some products in intrastate commerce and to federal governments. Most importantly, this program is voluntary!

Our rules and laws are strict and prison labor is often used as part of the rehabilitation process and the opportunity to work at such jobs is usually sought after by the individual prisoner. The circumstances here are considerably different than in the Japanese prison system.

I have presented some of the issues involved with this complex issue. One thing is clear, however, and that is that this practice by Japanese prisons is in violation of our laws, is economically unfair, and, finally, is in violation of accepted human rights standards.

Testimony of Mark J. Kurzmann, Esq.

Good Morning, Mr. Chairman and distinguished members of this committee. My name is Mark J. Kurzmann, a former U.S. Department of Justice Trial Attorney now in private practice in New York City. My task as the last scheduled speaker is to address briefly some of the legal and diplomatic issues implicated by the shocking events we have heard about this morning.

I hope that I will be able to contribute some insight as an attorney and advocate who has sat on both sides of the aisle in civil rights cases. From my representation of federal agencies such as the F.B.I., C.I.A. and Department of State in civil rights and related cases I understand that often there can be complex and just explanations for what on the surface may appear to be as callous government activity. Governments often suffer unfair criticism because the truth rarely catches up with the lie or glib oversimplification. Sometimes, the government's true motives are honorable but are classified or otherwise confidential and for the good of the nation, and to our great credit and strength as a nation, government and its officials suffer criticism which can not be fully rebutted.

Similarly, private plaintiffs of all kinds can complain of abuses sometimes more imaginary than real. The problem before the Sub-Committee this morning stand in a uniquely special position. It is beyond the pale of tolerable or excusable governmental behavior.

Forced prison and torture are as real and worthy of the Congress' attention as any other human rights issue I can think of. Such labor has a name in American jurisprudence it



was called peonage. I use the past tense because it has been in constitutional disrepute for decades and is outlawed by statute. Further, even the Empire of Japan ratified the Convention on Forced Compulsory labor in 1932--nearly sixty-two (62) years ago. As of today, one hundred and twenty-nine (129) nations have ratified this Convention.

The Convention prohibits "forced labor" which among other things is work which is exacted from a person "as a consequence of a conviction in a court of law and ... that person is at the disposal of private persons, companies or associations."

How can Kip Lavenger's labor be described as anything but "coerced." Given the Hobson's Choice of working literally like a slave on a ~~Sega, Burberry's~~ or Mizuno prison assembly line or be held in what a civilized person can only call a hybrid of the worst elements torture chamber and solitary confinement.

Further, the Universal Declaration of Human Rights prohibits slavery. The records of the discussions of the draftsmen, which comprise the closest thing the international community has to a legislative history for the Declaration, shows that the Declaration's prohibition of slavery was intended to embrace forced or prison labor.

I recognize that the reach and limits of policy-making and diplomacy are quite different and that the singlemindedness of lawyer's advocacy can lead him or her to neglect how diplomacy can ameliorate a problem. Turning first to what the Congress and Executive Branch may consider in this regard, I have a few comments to add to Michael Griffith's. The Sub-Committee may wish to explore the feasibility of a disclosure requirement on goods imported in to this county with regard to the use of forced or prison labor of American nationals in its manufacture. While it appears that the frequency of these abuses in Japanese

prisons are relatively few in number relative to our population, such a simple reporting requirement would likely have an enormously therapeutic effect on this heinous practice overseas. Who would purchase an toy ski pole set, even if it were decorated with the stars and stripes, if they were so proudly affixed by an American serving time in a foreign jail? No one. And, the economic realities of the marketplace would go a long way to stop this abuse of human rights.

Turning to direct assistance and remedies for the victims, you know from the previous speakers that all but the prisoners have a good excuse why they are free of any culpability or responsibility for deviating from the established norms of civilized conduct. In my view, legal relief for our citizens subjected to these abuses should be available in our courts against the governments and commercial concerns joined in common enterprise.

Because this has been roundly prohibited by the international community for sixty-two years, there is little law on the books on how to redress this grievance. /nevertheless and with respect to the governments, the United States Foreign Sovereign Immunities Act ("FSIA") should provide some measure of relief. Although this case is novel, the FSIA strips government defendants of their traditional immunity from suit and liability in instances where the government is engaged in a commercial enterprise. The Sub-Committee may wish to hold hearing itself or in collaboration with the Judiciary Committee on possible amendments to the FSIA to address directly the problem before us. While i believe a strong argument can be made that the statue covers the wrongs before us today, the amendment would serve to underscore the concern of the Congress and the American people over the plight of Kip and the others. For, it seems plain that unless the Japanese penal system undergoes a radical

reorientation in values, people like Kip will go through the same dreadful experiences into the indefinite future.

The industrial giants who are the junior partners in this dirty business most assuredly will rely on every defense they can--even to compensating prisoners with the prevailing Japanese minimum wage. The courts of our country have correctly asserted criminal jurisdiction in cases of gross violation of international norms of conduct. The Universal Principle and he Passive Personal Principal have served as aids to domestic jurisdiction over crimes heinous crimes committed overseas.

Private plaintiffs may rely on these same devices in seeking redress of private harms flowing from these breaches of public international law. The Sub-Committee may consider exploring further avenues for the enforcement of these norms by expansion of the reach of our courts in this regard.

In our time, perhaps the most eloquent and effective exponent of the triumph of the human spirit in the dark of prison is Aleksandr Solzhenitsyn. I mention him in closing not to compare qualitatively his suffering with that of any witness today. each is different and he suffered longer and for his political courage and moral fiber.

He returned only a few days ago to his homeland from his exile in Vermont. His words written long before Kip Lavinger's plight became known to me ring with truth and, in my humble opinion, serve to underscore that the high issues of policy and conscience we heard of today deserve follow up and some substantive action.

Solzhenitsyn said: "The salvation of mankind lies only in making everything the concern of all."

## DAS HUBBARD STATEMENT ON JAPAN PRISON LABOR

## HFAC EAST ASIA SUBCOMMITTEE

RAYBURN 2172,

JUNE 10, 1994

Thank you, Mr. Chairman. I'm pleased to have the opportunity to speak to you today on the issue of prison labor in Japan.

Before I begin, I should note that statutory responsibility for the enforcement of the relevant sections of U.S. law on import of goods made with prison labor falls to the U.S. Customs Service. We at the Department of State have worked closely with Customs on this issue, and will continue to do so. On some of your more technical questions related to this issue, I may have to refer you to my colleagues at Customs.

The U.S. Government has a close and cooperative relationship with Japanese law enforcement officials, with whom we have a broad range of shared interests, including narcotics, terrorism, and organized crime. Our Embassy maintains a generally good relationship with Japanese prison authorities. At any given moment, we tend to have around 40 American civilians held in Japanese prisons, police stations, or detention centers (NOTE: in addition, about 25 American military are held in a special Japanese prison under SOFA; their incarceration is monitored by DOD). It is an important aspect of our consular responsibilities that we monitor the

conditions and treatment accorded these Americans.

All prisoners sentenced to Japanese prisons are required to work. Once sentenced, prisoners are required to work, in return for which they receive some monetary compensation, generally geared to the difficulty of the labor, and become eligible for parole. Convicts can refuse to work, but this will subject them to disciplinary action and normally render them ineligible for parole.

There are three types of prison labor in Japanese prisons: maintenance of prison facilities; vocational training; and production labor. That third category, production labor, is made up of orders placed by the government and cooperating Japanese government institutions for their internal use, and orders placed by private companies. Clearly it is in the area of orders placed by private companies that the potential exists for goods to be exported to the U.S. in violation of U.S. laws forbidding the import of goods made with prison labor.

We have endeavored over the years to ensure that no products manufactured in whole or in part by Japanese prison labor are imported into the United States, as set forth in Section 307 of the Tariff Act of 1930, 19 USC 1307 (the Smoot-Hawley Tariffs). The Japanese understand the seriousness with which we treat this issue. We are told the

Director-General of the Ministry of Justice's Corrections Bureau has circulated to contractors notices explaining that prisons cannot undertake production of products and parts which will be exported to the United States. In 1991, the Ministry of Justice added a special clause to contracts between the prison and the contractor, stipulating that the export of prison labor products to the United States is forbidden. We have seen sample contracts which contain this clause.

It is, of course, conceivable that these provisions have been overlooked in some specific cases. That is why we -- Customs and the State Department -- are looking closely into Mr. Lavinger's allegations about the import into the United States of goods from Japan made with prison labor. I understand that in July 1993, following Mr. Lavinger's return to the United States, Customs officials spoke with him about his allegations. I also understand that at the time, Mr. Lavinger, on advice of counsel, declined to identify the companies he alleged were importing products into the United States made with prison labor.

We have attempted on our own to investigate these allegations. One U.S. subsidiary of a Japanese firm stepped forward and volunteered to Customs that until 1992, it might inadvertently have used in some products exported to the United States a component manufactured in Fuchu prison in Japan.

These had been supplied by a contractor. After 1992, the Japanese firm severed its relations with that contractor. My understanding is Customs is still investigating this case, and so it would be inappropriate for me to comment further on the status of an ongoing investigation. Apart from that case, we have obtained no hard evidence that goods made in whole or in part by Japanese prison labor have been imported into the United States.

More broadly, we have attempted this year to see if there is a way U.S. Customs officers might be able to visit the prisons in question, observe prison labor conditions there, and confirm that the goods being produced are not destined for the American market. We have raised this issue at a high level with the Japanese Government.

We are quite pleased that late last month Japan's Ministry of Justice told our Embassy in Tokyo that U.S. Customs officials would be permitted to visit Fuchu Prison -- the Japanese prison where all foreigners are held after sentencing -- to observe conditions involving prison labor there. This will enable us to explore firsthand the allegations Mr. Lavinger has made. Allowing foreign government officials to examine the conditions in a country's prisons is always a sensitive matter for any sovereign nation. We believe the Japanese Government's agreement to let the U.S. do so is

indicative of Japan's real commitment to address our concerns on this issue.

Until now we have viewed this primarily as an issue of enforcing U.S. law regarding the import of goods made with prison labor. I understand there are now allegations that conditions in Japanese prisons or the use of rehabilitative labor in those prisons violates human rights standards or Japan's commitments on forced labor under the International Labor Organization (ILO). Our Embassy in Tokyo informs me that Mr. Lavinger has been the first American prisoner ever to make these sorts of complaints about the prison labor program. Most of our prisoners have spoken of it in neutral terms. Indeed, until now the only critical comments we received about the prison labor program focussed on some American prisoners' frustration that they were being kept away from skilled jobs involving heavy machinery -- apparently because Japanese authorities were reluctant to put Americans in a position where they might be injured while performing prison labor.

Mr. Lavinger has stated that these labor programs might violate Japan's commitments under Convention 29 of the International Labor Organization (Japan became a party in 1932). For our part, the United States is not a party to Convention 29, and is not bound by its provisions. We have, however, ratified a later ILO Convention (Number 105, 1957,



ratified by U.S. in 1991) on the Abolition of Forced Labor.

Convention 29 does not seem to apply here. Convention 29 applies not to convict labor but to "forced or compulsory labor," which the Convention defines as generally not including "any work or service exacted from any person as a consequence of a conviction in a court of law." Furthermore, the Convention's language on labor for private firms states that any labor that is a consequence of conviction in a court of law must be "carried out under the supervision and control of a public authority, and that the said person is not hired to or placed at the disposal of private individuals, companies or associations." All the prison labor programs in Japan of which we are aware are performed in the prisons, and are supervised by the prison authorities. The private sector may contract for the production of these goods, or purchase them from suppliers, but they do not hire, control or supervise the prisoners performing the labor.

The State Department and the Customs Service have been actively pursuing the issue of possible prison labor exports to the United States since it was first brought to our attention last year. We will continue to do so until we are satisfied that Japan is not exporting any goods made with prison labor to the United States in violation of U.S. law, and is not

subjecting U.S. prisoners in Japan to forced labor in a manner that is inhumane or violates Japan's ILO commitments. We hope to work closely with you as we pursue this.

I'd be happy to try to answer any questions you might have.

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June 9, 1994

President William Clinton  
 The White House  
 1600 Pennsylvania Avenue  
 Washington, D.C.

Dear Mr. President:

I am a founding partner of the International Legal Defense Counsel, a law firm with offices in Southampton, New York and Philadelphia, Pennsylvania. For the last 20 years I have been representing Americans and foreign citizens in approximately 25 countries who have been arrested for various reasons.

Perhaps my most renown client was William Hayes, Jr., the subject of Oliver Stones academy award winning movie **Midnight Express**. Billy and I were both characters in the accompanying book which related the experiences of an American in a Turkish jail. My negotiations with the State Department and the Turkish Government helped originate the concept

of the bilateral transfer of prisoners which is now common place among many countries of the world.

I later testified before Senator Bidens Committee on Penitentiaries and Corrections which led to the promulgation of transfer treaties between the United States, Mexico and Canada in 1972. I am presently a member of the Criminal Law Committee of the International Bar Association and my partner, Richard Atkins, is the Chairman of that Committee.

May this letter serve as notice to bring to your attention a situation presently existing in Japan that you and our fellow Americans will find abhorrent.

At this present time Japan, as was the case in Communist China, is presently engaging in PRISON LABOR. Not only is this offensive practice being promulgated by and for the Japanese Government, but in addition the forced labor of the prisoners involved is being used for the making of products for private commercial companies.

Further and even more shocking is the fact that American Citizens, in addition to those of many other countries, are compelled to make these products under the most severe and inhumane conditions imaginable. My investigation has concluded that at the minimum three prisons under the control of the Japanese prison authorities are presently involved in this activity. They are as follows: The Osaka House of Detention, Seiba Prison and Fuchu Prison which is outside of Tokyo. Specifically, Fuchu is the prison where most Americans who have allegedly committed crimes in Japan are incarcerated. Approximately 12-15 Americans are presently incarcerated in the aforementioned prison in addition to about 2500 Japanese prisoners. Although I have no first-hand evidence it is my belief that a significant amount of Japanese prisoners within the full Japanese prison system may well be involved in forced or compulsory

labor for the benefit of private commercial contractors or companies.

The 2500 Fuchu prisoners are divided into work groups manning approximately 24 factories where such items as electronic parts, toys, games, smoke detectors, bags among other products are both manufactured and fabricated. It is my understanding that the Japanese Government has contracted out the services of these prisoners to a number of Japanese and Multinational companies. The inmates are expected to work 8.5 hours a day, 5.5 days a week. There is absolutely no talking permitted during this period and the prisoners are not permitted to raise their heads while at their work stations. Quality control personnel are stationed throughout the factories to instruct and inspect the goods produced therein. These individuals wore different color uniforms than the prison guards and bi-monthly executives in suits come to the factories to oversee the performance of the inmates and the quality and quantity of their labor.

Although I have no firm evidence that any of these products have been exported to the United States there does seem to be some telltale signs that the items may not be just for domestic consumption. Specifically certain products had the label affixed MADE IN JAPAN in English. One (toddlers) childrens toy ski pole set made of plastic skis in addition to the made in Japan label also included American flags affixed thereto by the American prisoners. The ski set was entitled "Super Ski" and approximately 80-90 thousand were produced by my client, and relative, Christopher Lavinger, alone. Taking into account that other prisoners were also producing the same amount over the course of a few months it seems obvious that the Japanese domestic market could not absorb such a large number of this type of item.

Similarly, Mr. Lavinger along with Charles Cashdollar, another American client

of mine, were forced to fabricate high quality shopping bags with the Burberry name and logo. Although the attorneys for Burberry have denied being involved in this practice it seems unlikely that the Japanese Government would contract with a counterfeiter for the making of illegal shopping bags bearing the Burberry name. My clients were producing almost 2500 of these bags a day not including the total for other prisoners assigned to the same task. With limited locations in Japan it would seem that these items would be earmarked for Burberry's foreign locations if in fact they are themselves involved or through a subcontractor. However, when my clients offered Burberry's the opportunity to conduct an impartial investigation by a respected International Security firm they in fact refused to share the costs of an investigation.

My clients have further alleged that products are being produced in Fuchu prison for Mitsukoshi and Daimaru two of Japan's largest department stores. Mizuno, a well-known Japanese sports and sportswear firm who has an international reputation has also been allegedly reported as having bags produced with their name and logo inscribed upon as stated to me by my clients in sworn affidavits.

Likewise, Sega a large Japanese Company has had products manufactured in Fuchu by Mr. Lavinger and Cashdollar. On behalf of my clients, I contacted all the above firms and demanded that they cease and desist using prison labor in addition to asking that proper compensation be paid to them.

Only Sega complied when its General Counsel, Thomas Klirgaard of Sega U.S.A., came to Southampton, New York, to confer with me and my clients, in addition to going to Japan to see that the practice was discontinued and safeguards put in place to insure that it would not happen again. Although Sega has not compensated Christopher and Charles for the

indentured servitude in which they were kept, I am satisfied they have terminated this practice as it was discovered that a sub-contractor was responsible for contracting prison labor.

I am advised that prison labor as described above is mandated for either all or most of the prisoners incarcerated in Fuchu and the other named prisons. Failure to partake in this involuntary practice will result in the prisoner being thrown into a chobatsu (punishment) cell, wherein after being manacled in grotesque positions with his hands behind his back, he is forced to eat off the floor and defecate in his uniform during the pendency of his stay which often lasts a week. To document these allegations I have included as an addendum illustrations from a little-known paperback, written by a former Japanese prisoner from Fuchu, showing pictures of the prison factory, the assembly line, company cars and trucks and the punishment cells and techniques. The title in Japanese is Fuchu Diary Illustrated.

Almost as distressing is the fact that the U.S. Embassy in Tokyo has not only known about the aforementioned prison labor involving private and or Public Commercial Companies for years, but in fact has approved of this treatment of Americans by issuing directives to prison bound Americans indicating that they will be expected to perform this type of labor activity described above. I am equally shocked that this conduct by the Japanese Government is not only tolerated by our Embassy, but that there has been no diplomatic protest that I am aware of.

For your interest, prison labor for commercial companies is permitted in the United States Federal Prison System but only under the following restrictions. First, it must be voluntary, - second, the minimum wage for that locality must be paid for similar labor and last unions in the locale must be consulted. These indicia are clearly set forth in Title 18,

Section 4082 of the U.S. Code. In addition, Congress in the Tariff Act of 1930 prohibited goods from being produced by prison labor to be imported into the United States and in furtherance of this principle a "Sense of Congress" was taken that deplored the manufacture of goods by slave labor in the Soviet Union.

Similarly, Title 18, Section 1584 specifically prohibits persons being held in indentured servitude and Title 18, Section 1581 likewise outlaws peonage and slavery as cited above not only is Japan in violation of the rights of American citizens as codified under U.S. law, but they have also violated Convention 29 of the General Conference of the International Labor Organization, an agency of the United Nations, prohibiting forced or compulsory labor. As a signatory to this Convention in 1932, Japan has violated its pledge to abolish this offensive practice. By gearing their prison system to compel prisoners to make products for commercial companies, as outlawed by the above Convention, Japan is likewise in contravention of the Universal Declaration of Human Rights. Adopted by the United Nations in 1948 it specifically incorporates the ILO provisions of Convention 29 regarding the suppression of forced and compulsory labor which has been ratified by 129 countries.

I have personally asked legal representatives from the above cited commercial companies to refrain from participating in any contractual relationship with the Japanese Government that would permit them from benefiting in prison labor. I have also asked that the Japanese based firms and Burberry's to compensate my clients for the work performed while participating in the alleged production of their products.

None of the firms have either agreed to compensate the prisoners (who are paid a minimum of approximately .03 per hour) for at least the U.S. or Japanese minimum wage, nor



except for Segn, have any of the firms agreed to stop participation in this disgraceful practice. Similarly, the legal representative to the Japanese Embassy in Washington, D.C., Tatsuya Sakuma advised me that his Minister of Justice sees nothing inappropriate with this even though the United States and the Community of Nations have been strictly opposed to the prison labor policies of Communist China. It is ironic that Japan has been secretly involved in the same practices for an undetermined amount of time and has only now been exposed. In fact my clients have observed Chinese boxed products coming into Fuchu which were enhanced and were then repackaged in Japanese marked boxes. The forced labor practices of the Japanese are far more reprehensible than those of the Chinese, as the Japanese have exacerbated the situation by not only using private commercial companies, but are also using American and prisoners from other countries under duress and by threat of torture.

In consideration of the events and situation that I have described above, I respectfully ask that the following steps be taken to immediately bring to a halt the imposition of prison labor in Japan.

1. That the President of the United States of America invoke Title 22, Section 1732 of the U.S. code finding that American citizens are being wrongfully held and in violation of their rights of American citizenship. Further that their being compelled to participate in forced prison labor is in the nature of indentured servitude, a violation of Title 18, Section 1584 of the U.S. Code and that they be immediately transferred out of prison labor factories to more generally accepted prison facilities.

2. That the President and the Secretary of State express in the strongest possible terms to the Japanese Government that this reprehensible practice be terminated

immediately or at the very least make it voluntary for any prisoners willing to participate and to compensate them at the minimum wage or more for similar labor in Japan.

3. That governments whose citizens are similarly situated protest these practices to the Government of Japan and demand an immediate cessation to this practice.

4. That in the event the Japanese do not terminate prison labor, the President should recommend to the Congress sanctions including the cessation of the present trade negotiations that are being conducted between the U.S. and Japan.

In conclusion, I hope that reporting to you of the situation involving prison labor in Japan will be helpful to you in doing everything within your power and that of the United States to put an immediate end to this internationally condemned practice. I and my clients will be seeking public, private and/or governmental support to continue our investigative and legal efforts to not only stop the aforesaid practice and free all participating prisoners but to also determine whether any of these goods have been exported to other countries or the U.S.

Thank you.

Yours truly,

Michael Jeffrey Griffith  
300 Hampton Road  
Southampton, NY 11969

cc: Hon. Thomas Foley  
Hon. George Mitchell

GUIDELINES  
FOR  
AMERICANS  
ARRESTED IN JAPAN



U. S. MISSION, JAPAN

9.6 WORK

Work is obligatory for inmates sentenced to imprisonment with forced labor, which includes the bulk of the population at Fuchu. Inmates are assigned eight hours of work per day, 168 hours of work every four weeks. Suitable work is assigned to the inmate based on the results of the orientation assessment. In addition to the vocational training-related work, prisoners do assembly work for outside contractors and work in various sections of the prison plant, e.g. the prison laundry, the kitchen, etc. The inmates receive payment for their labor which they can use to order books and magazines, or buy items from the prison store. Any unspent money will be given to the prisoner upon release. All income received by the prison for the sale of goods produced by the inmates is treated as government revenue.

(20)

this page should explain itself.

Attorney at Law  
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to : Michael

from: Michael

1. Cover Page

2. Factory

3. Working Prisoners(they are making toys, machine parts etc)

4. Private Company Car coming in and out with raw material

5. Punishment

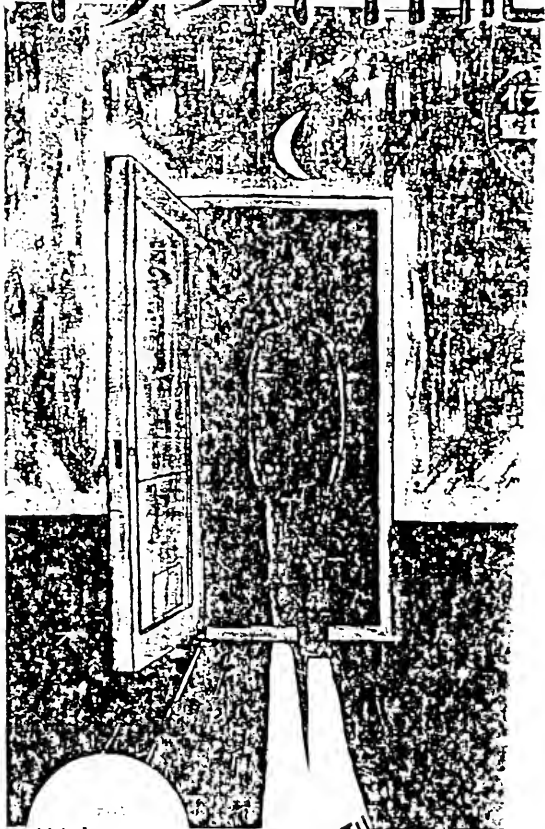
6. Play Ground?

Good Luck!

*Hideyuki Kayamura*

塀の中の

# イラスト口説き



野中らろし

府中刑のす













## CONVENTION No. 29

*Convention concerning Forced or Compulsory Labour*<sup>1</sup>

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fourteenth Session on 10 June 1930, and

Having decided upon the adoption of certain proposals with regard to forced or compulsory labour, which is included in the first item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-eighth day of June of the year one thousand nine hundred and thirty the following Convention, which may be cited as the Forced Labour Convention, 1930, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation:

*Article 1*

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

2. With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided.

3. At the expiration of a period of five years after the coming into force of this Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the Conference.

*Article 2*

1. For the purposes of this Convention the term "forced or compulsory labour" shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

2. Nevertheless, for the purposes of this Convention, the term "forced or compulsory labour" shall not include—

<sup>1</sup> Date of coming into force: 1 May 1952.

- (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character ;
- (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country ;
- (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations ;
- (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population ;
- (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

#### Article 3

For the purposes of this Convention the term "competent authority" shall mean either an authority of the metropolitan country or the highest central authority in the territory concerned.

#### Article 4

1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

2. Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member's ratification of this Convention is registered by the Director-General of the International Labour Office, the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member.

#### Article 5

1. No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade.

2. Where concessions exist containing provisions involving such forced or compulsory labour, such provisions shall be rescinded as soon as possible in order to comply with Article 1 of this Convention.

#### Article 6

Officials of the administration, even when they have the duty of encouraging the populations under their charge to engage in some form of labour, shall not put constraint upon the said populations or upon any individual members thereof to work for private individuals, companies or associations.

Date of entry into force: 01.05.1932

STATES	Ratification required	STATES	Ratification required
ALBANIA	25.04.37	CZECH AND SLOVAK REPUBLIC	30.10.35
ALGERIA	19.10.62	DENMARK	11.02.32
ANGOLA	04.06.76	DJIBOUTI	01.06.74
ANTIGUA AND BARBUDA	02.02.81	DOMINICA	23.02.53
ARGENTINA	14.03.50	DOMINICAN REPUBLIC	03.12.36
AUSTRALIA	02.01.32	Ecuador	06.07.34
AUSTRIA	07.06.60	EGYPT	29.11.35
AZERBAIJAN	19.01.32	FINI	19.04.74
BAHAMAS	23.05.76	FINLAND	11.01.36
BANGLADESH	11.04.81	FRANCE	24.06.37
BARBADOS	22.06.72	GABON	14.10.60
BELGIUM	02.01.37	GERMANY	12.06.36
BELGIUM REPUBLIC OF	31.03.36	GHANA	20.03.57
BELGIUM	20.01.44	GREECE	13.06.32
BENIN	15.11.53	GUATEMALA	06.07.79
BHUTAN	11.11.60	GUINEA	21.01.39
BURUNDI	23.04.57	GUINEA-BISSAU	21.12.77
BURUNDI	22.09.72	GUAYANA	04.06.66
BURUNDI	21.01.60	HAIITI	14.03.38
BURUNDI	11.01.63	HONDURAS	21.02.57
CAJALABO	24.12.69	HUNGARY	03.06.36
CAMBODIA	07.06.60	ICELAND	17.02.49
CAMBODIA	01.12.79	INDIA	30.11.34
CAMBODIA REPUBLIC	31.06.60	INDONESIA	12.06.50
CHAD	10.11.60	IRAN ISLAMIC REPUBLIC	07.06.37
CHILE	31.03.33	IRAN	07.11.62
CHINA	04.07.69	IRAN	02.03.31
CHINA	23.10.74	ISRAEL	07.06.53
CHINA	10.11.60	ITALY	18.09.34
CHINA	02.06.60	JAMAICA	25.12.62
CHINA	11.11.60	JAPAN	23.11.32
CHINA	17.07.53	JORDAN	06.06.76
CHINA	11.11.60		

Date of entry into force: 01.05.1932

STATES	Ratification required	STATES	Ratification required
KENYA	13.01.64	SANTALUCIA	14.03.50
KUWAIT	23.09.64	SALDI ARABIA	15.06.78
LAO PEOPLE'S DEM. REP.	23.01.64	SENEGAL	04.11.60
LEBANON	01.06.77	SEYCHELLES	06.02.79
LESOTHO	31.10.66	SIERRA LEONE	13.06.61
LIBERIA	01.03.51	SINGAPORE	25.10.63
LIBYAN ARAB JAMAHIRIYA	13.06.61	SLOVENIA	09.06.93
LUXEMBOURG	24.07.64	SOLOMON ISLANDS	06.09.85
MACARONIA	01.11.60	SOMALIA	18.11.60
MACARONIA	11.11.57	SPAIN	29.09.32
MACARONIA	22.09.60	SRI LANKA	01.04.50
MACARONIA	04.01.63	SUDAN	18.06.57
MACARONIA	20.06.61	SURINAME	15.06.78
MACARONIA	02.11.69	SWAZILAND	26.04.74
MACARONIA	12.03.54	SWEDEN	23.12.31
MACARONIA	20.03.57	SWITZERLAND	23.03.50
MACARONIA	04.03.55	SYRIAN ARAB REPUBLIC	26.07.60
MACARONIA	31.03.55	TANZANIA UNITED REPUBLIC OF	30.01.62
MACARONIA	29.03.38	TANZANIA	26.02.69
MACARONIA	15.04.34	TANZANIA	07.06.60
MACARONIA	27.02.61	TRINIDAD AND TOBAGO	24.03.63
MACARONIA	17.10.60	TUNISIA	17.12.62
MACARONIA	01.07.52	TUNISIA	04.06.63
MACARONIA	23.12.57	UKRAINE	10.11.54
MACARONIA	14.03.66	UNITED ARAB EMIRATES	27.03.52
MACARONIA	01.03.76	UNITED KINGDOM	01.06.31
MACARONIA	25.08.67	VENEZUELA	20.11.44
MACARONIA	01.02.60	VENEZUELA	14.04.69
MACARONIA	30.07.58	VENEZUELA	24.03.31
MACARONIA	26.06.56	ZAIRE	20.06.60
MACARONIA	29.03.57	ZAMBIA	02.12.74
MACARONIA	23.06.56		
MACARONIA	23.06.56		

Total of ratifications: 129

# UNIVERSAL DECLARATION of HUMAN RIGHTS



ON DECEMBER 10, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights, the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

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Final Authorized Text

UNITED NATIONS

OFFICE OF PUBLIC INFORMATION

113. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 refers to forced labour only in a preambular paragraph which reads:

Having regard to the Forced Labour Convention of 1930 and to subsequent action by the International Labour Organisation in regard to forced or compulsory labour . . .

114. The Convention referred to is the ILO Forced Labour Convention, 1930 (No. 29), which entered into force on 1 May 1932. This Convention provides for the suppression of forced or compulsory labour in all its forms within the shortest possible period subject to exceptions relating to compulsory military service, normal civic obligations, convict labour, work in emergencies and minor communal services. On 25 June 1957 the General Conference of ILO adopted a new Abolition of Forced Labour Convention (No. 105) to abolish "certain forms of forced or compulsory labour constituting a violation of the rights of man referred to in the Charter of the United Nations and enunciated by the Universal Declaration of Human Rights". Under article 1 of this Convention, each member of ILO which ratifies the Convention undertakes to suppress and not to make use of any form of forced or compulsory labour:

(a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

(b) As a method of mobilising and using labour for purposes of economic development;

(c) As a means of labour discipline;

(d) As a punishment for having participated in strikes;

(e) As a means of racial, social, national or religious discrimination.

Under article 2 each State party undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in article 1.

115. The International Convention on the Suppression and Punishment of the Crime of *Apartheid*, adopted and opened for signature and ratification or accession by the General Assembly in resolution 3068 (XXVIII) of 30 November 1973, provides, in article II, that the term "the crime of *apartheid*" shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

... (e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour; . . .

## 2. JOINT UNITED NATIONS/ILO *Ad Hoc* COMMITTEE ON FORCED LABOUR

116. At its sixth session, in 1948, the Economic and Social Council included in its agenda, at the request of the American Federation of Labor formulated in a letter dated 24 November 1947,<sup>12</sup> an item entitled:

"Survey on forced labour and measures for its abolition". The American Federation of Labor suggested, in its letter, that the Council should ask ILO to undertake a comprehensive survey on the extent of forced labour in all Member States of the United Nations and to suggest positive measures for eliminating forced labour, including a revised convention and measures for its implementation.

117. At its eighth session the Council adopted resolution 195 (VIII) of 7 March 1949, in which it requested the Secretary-General to co-operate closely with the International Labour Organisation in its work on forced labour questions, to approach all Governments and to enquire whether they would be prepared to co-operate in an impartial investigation on forced labour. The Secretary-General was also requested to inform and consult ILO regarding the progress being made on this question.

118. At its ninth session the Council adopted resolution 237 of 5 August 1949 (IX) in which it took note of the communication of ILO on the conclusions arrived at by the Governing Body of the International Labour Office at its 109th session, recommending that close contact should be established with the Secretary-General with a view to the setting up of an impartial commission of inquiry. The Council considered that the replies received from Governments up to its ninth session did not provide the conditions under which a commission of inquiry could operate effectively, and requested the Secretary-General to ask Governments which had not as yet replied, whether they would be prepared to co-operate in an inquiry.

119. In resolution 350 (XII), adopted on 19 March 1951, the Economic and Social Council, considering the replies furnished by Member States in accordance with resolutions 195 (VIII) and 237 (IX), and taking note of the communications from the International Labour Organisation which set forth the discussions on the question of forced labour at the 111th and 113th sessions of the Governing Body, decided to establish, in co-operation with ILO, the *Ad Hoc* Committee on Forced Labour, composed of independent persons qualified by their competence and impartiality.

120. The *Ad Hoc* Committee on Forced Labour was requested, in Council resolution 350 (XII), to study the nature and extent of the problem raised by the existence in the world of systems of forced or "corrective" labour, which were employed as a means of political coercion or punishment for holding or expressing political views, and which were on such a scale as to constitute an important element in the economy of a given country, by examining the texts of laws and regulations and their application in the light of the principles set out in the ILO Forced Labour Convention, 1930 (No. 29), the principles of the Charter of the United Nations relating to respect for human rights and fundamental freedoms, and the principles of the Universal Declaration of Human Rights, and if the Committee thought fit, by taking additional evidence into consideration.

<sup>12</sup> E/1946



## Encyclopedia

Nature and incidents of citizenship, see C.J.S. Citizens §§ 1, 18.

## WESTLAW ELECTRONIC RESEARCH

Citizens cases: 7th [add key number].  
See, also, WESTLAW guide following the Explanation pages of this volume.

## NOTES OF DECISIONS

**Divestiture of acquired citizenship** 1 2. **Liability to native country**  
**Liability to native country** 2  
A naturalized citizen who returns to his native country is liable to be punished for crime, but he cannot rightfully be punished for the nonperformance of a duty which is supposed to grow out of his abjured allegiance. 1859, 9 Op. Atty. Gen. 357.

3. **Minors**

A citizen by birth, while residing with his father, who had resumed his German nationality, acquired, under the Treaty of 1868 with North Germany, the nationality of his father during minority and was subject to military duty and conscription in Germany. 1875, 15 Op. Atty. Gen. 15. See, also, *Ex parte Gilroy*, D.C. N.Y. 1919, 257 F. 110.

## § 1732. Release of citizens imprisoned by foreign governments

Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the release of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war and not otherwise prohibited by law, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

(K.S. § 2001; Pub.L. 101-222, § 9, Dec. 12, 1989, 103 Stat. 1900.)

## HISTORICAL AND STATUTORY NOTES

Classified to sec.

## CHAPTER 23—PROTECTION OF CITIZENS ABROAD

Protection to naturalized citizens abroad.

Release of citizens imprisoned by foreign governments.

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## 731. Protection to naturalized citizens abroad

naturalized citizens of the United States while in foreign countries are entitled to and shall receive from this Government the protection of persons and property which is accorded to born citizens.

§ 2000.)

## HISTORICAL AND STATUTORY NOTES

The Congress finds that—

"(1) United States citizens living abroad should be provided fair and equitable treatment by the United States Government with regard to taxation, citizenship of progeny, veterans' benefits, voting rights, Social Security

benefits, and other obligations, rights, and benefits; and

"(2) United States statutes and regulations should be designed so as not to create competitive disadvantage for individual American citizens living abroad or working in international

commerce."

Pub.L. 95-426, Title VI, § 611, Oct. 7, 1978, 92 Stat. 989, as amended by Pub.L. 100-191, § 407, Aug. 15, 1979, 93 Stat. 1411, Title V, § 405, Pub.L. 97-241, Title V, § 405, (2), (111), Aug. 24, 1982, 96 Stat. 537.



\* Socialist Republics, the Department of State confirmed that Soviet forced labor is used "to produce large amounts of primary and manufactured goods for both domestic and Western export markets", and that such labor is used as an integral part of Soviet national economy.

"(2) the Central Intelligence Agency has compiled a list of over three dozen products made by Soviet forced labor and imported by the United States, and that items on the September 27, 1983 list include chemicals, gold, uranium, aluminum, wood products and glassware;

\* "(3) the International Commission on Human Rights has concluded that the Soviet Union 'continues the deplorable practice of forced labor in manufacturing and construction projects' and that prisoners 'are forced to work under conditions of extreme hardship including malnutrition, inadequate shelter and clothing, and severe discipline';

\* "(4) the Congress is on record as opposing forced labor, having enacted a prohibition (in section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)) on the importation of goods made with such labor and having passed in the Ninety-eighth Congress by unanimous vote a resolution calling such practices morally reprehensible and calling upon the President to express to the Soviet Union the opposition of the United States to such policies;

"(5) the prohibition enacted by the Congress declares that 'goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited';

"(6) there is ample knowledge of the Soviet forced labor system to require enforcement of the prohibition contained in section 307 of the Tariff Act of 1930 (19 U.S.C. 1307); and

"(7) the delay in enforcing the law brings into question the commitment of the United States to protect the inhumane treatment of prisoners in the Soviet Gulag, an estimated ten thousand of whom are political and religious prisoners according to the Department of State.

\* "(b) Sense of Congress. It is the sense of the Congress that the President should express to the Soviet Union in the firmest possible terms the strong moral opposition of the United States to the slave labor policies of the Soviet Union by every means possible, including refusing to permit the importation into the United States of any products made in whole or in part by such labor.

"(c) Presidential action. The President is hereby requested to instruct the Secretary of the Treasury to enforce section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) without delay."

#### INTERPRETIVE NOTES AND DECISIONS

Under 19 USCS § 1307, consumers, workers and producers, shareholders, handlers, public interest organizations, and legislators, who challenged Customs Service's denial of petition seeking to bar importation of goods produced in Soviet Union wholly or in part by forced labor, lacked standing in any of the capacities that they asserted or for any of the injuries they claimed. *McKinney v. United States Dept. of Treasury* (1986) 4 CA FC 103, 799 F.2d 1544.

Whether or not Soviet labor should be characterized as "forced" for purposes of 19 USCS § 1307 is political question which is not subject to judicial determination; although statute does not explicitly so indicate, Congress must have intended to vest decision of whether goods of whole nation should be banned in hands of executive branch rather than in hands of private citizens or judiciary at behest of private citizen's suit; foreign goods which are purportedly product of national system of forced labor are not barred under 19 USCS § 1307 until executive branch declares that in fact goods are product of forced labor. *Associated Imports, Inc. v. International Longshoremen's Assn.* (1985, SD NY) 609 F Supp 595, motion to vacate den (SD NY) 680 F Supp 93, 109 CCH LC ¶ 10511.

19 USCS § 307 does not give consumers enforce-

able interest in avoiding forced labor goods since statute is also designed to insure availability of such goods whenever domestic production fails to meet consumer demand; ethnic organizations lack standing to contest importation of goods simply based on sharing common heritage with those who suffer from forced labor conditions; longshoremen's association lacks standing to complain of importations of forced labor goods since their prosecution for handling of prohibited goods is hypothetical and speculative; congressional plaintiffs, as individual workers and producers may have standing if they show their participation in production of certain goods and that these goods compete with Soviet forced labor products. *McKinney v. U. S. Dept. of Treasury* (1985) 9 CIT 315, 614 F Supp 1226, aff'd 4 CA FC 103, 799 F.2d 1544.

Diesel engines, identified and/or marketed under particular brand name, which are being, or are likely to be, imported into United States from People's Republic of China, will be denied entry at all ports of entry and release from warehouses for consumption is prohibited, since Commissioner of Customs determined, on basis of Customs investigation, that such merchandise is manufactured with use of convict labor, forced labor, and indentured labor. (1992, Cust Serv) TD 92-27.

#### § 1309. Supplies for certain vessels and aircraft

(a) [Unchanged]

(b) Drawback. Articles withdrawn from bonded warehouses, bonded manufacturing warehouses, or from a foreign



TO: Mike Griffith

From: Kip Lavinper

Date: August 03, 1993

FAX #: 576-283-4303

Mike:

This is a list of the countries which are represented, to the best of my knowledge, at Fuchu.

USA  
Pakistan  
INDIA  
BANGLADE  
ENGLAND (Scotland etc)  
France  
Italy  
Ireland  
Ireland  
South Africa  
NORWAY  
Austria  
AUSTRALIA  
VICTORIA  
NEW ZEALAND

PHILIPPINES  
THAILAND  
CHINA  
TAIWAN  
HONG KONG  
COLOMBIA  
PERU  
BRAZIL  
MALAYSIA  
CAMBODIA  
SINGAPORE  
NORWAY  
AFGHANISTAN  
NEPAL

This is as much as Chuck & I can recall at the time

Kip

# International Legal Defense Counsel

# ILDC

## International Legal Defense Counsel

International Legal Defense Counsel (ILDC) was formed in 1980 to protect the rights of people who encounter legal problems in foreign countries. These foreign nationals often experience enormous difficulties in obtaining competent legal counsel, resulting in personal, professional, and family hardships and injustices.

ILDC is a group of American attorneys affiliated with an international network of lawyers concerned with the plight of individuals and companies facing legal difficulties in countries other than their own.

### International Legal Defense Counsel:

- Provides legal counsel at home and abroad, coordinates the legal representation, and acts as a liaison between the family, the foreign attorney and the client in civil, criminal and commercial cases.
- Provides legal counsel for foreigners and Americans in the United States with international legal concerns, including civil and commercial matters.
- Monitors the treatment of individuals arrested in foreign countries to insure that conditions are in accordance with accepted international agreements.
- Encourages foreign courts to consider alternatives to imprisonment such as pre-trial release, probation, parole, restitution, expulsion, or alternative rehabilitation programs.
- Actively promotes the adoption of prisoner transfer treaties; secures the return of individuals to their home country; and provides continuing legal representation, including parole and release hearings, for persons returned under such treaties.
- Increases the public awareness of the plight of those with legal problems in foreign countries through publications, conferences and seminars.

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Robert L. Pisaní  
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## International Legal Defense Counsel is:

Richard D. Atkins, Esq.  
Gerald H. Goldstein, Esq.  
Michael J. Griffith, Esq.  
Theodore Simon, Esq.

Robert L. Pisaní, *Executive Director*

treaties. His most renowned case involved the return of an American incarcerated in a Turkish prison which was the basis for the film and book, *Midnight Express*.

Robert L. Pisaní is a human rights activist and writer who has worked for many years on the problem of Americans incarcerated abroad. Among the groups he has worked with are the original Committee of Concerned Parents, Amnesty International, the National Council for the Welfare of Prisoners Abroad in England, and the Alliance of Non-Governmental Organizations on Crime Prevention and Criminal Justice in the United Nations. He has written and lectured widely on travel abroad and international criminal law.

Theodore Simon is co-author of "The United States Treaties on Transfer of Prisoners: A Survey" and a practicing criminal defense attorney. He was the first private attorney to successfully negotiate with a foreign government and resolve disputed provisions of a prisoner transfer treaty, thereby securing the return of Americans imprisoned in Peru. He was also the first to represent Americans transferred under the new Sentencing Reform Act concerning their release under the Act. He has presented papers at international conferences and lectures frequently on prisoner transfer, sentencing and parole, and other international matters.

Richard D. Atkins is past Chairman of the Philadelphia Bar Association's Criminal Justice Section and a consultant on narcotic laws who has advised, written and lectured widely on prisoner transfer, treaties, rehabilitation, and alternatives to imprisonment. He is vice-chairman of the Criminal Law Committee of the International Bar Association, a member of the International Committee of the American Correctional Association, and Amnesty International. He has been a practicing criminal defense attorney for more than 20 years.

Gerald H. Goldstein is a board certified specialist in criminal law and a member of the Board of Directors of the Texas and National Association of Criminal Defense Lawyers. An Adjunct Professor at the University of Texas Law School, he is also on the Faculty of the National College of Criminal Defense Lawyers and is a frequent lecturer at legal seminars. He is listed in the *Best Lawyers in America*.

Michael J. Griffith is a well-known criminal defense attorney with an established international practice who has counseled and represented clients in over 30 countries on a variety of criminal and civil charges. He has also represented international banking and corporate clients. He has testified as an expert witness before the United States Senate on Mexican and Canadian prisoner transfer

AFFIDAVIT

STATE OF NEW YORK:

ss. :

COUNTY OF SUFFOLK:

1. My name is Christopher David Lavinger, I am twenty-eight years of age. My current address

I am a citizen of the United States of America.

2. On or about February 26, 1992, I was sentenced to serve 22 months in a Japanese prison for violation of their criminal code. On or about April 16, 1992, I was sent to Fuchu prison, outside of Tokyo, and I served 11 months terminating on March 15, 1993.

3. While in Fuchu prison I was incarcerated along with approximately 14 Americans, 10 British citizens, 1 Belgian citizen and several French citizens.

4. That while in Fuchu prison, and on information and belief, there were approximately 2,500 prisoners who worked on a daily basis in 24 factories for private commercial interests.

5. That it was explained to me by prison officials that it was mandatory for me and my fellow prisoners to work for the benefit of private commercial enterprise in that the Japanese had contracted out prison labor for the commercial benefit of said private enterprise.

6. That in furtherance of providing prison labor for private commercial enterprise I was assigned for a period of time to make commercial products for SEGA.

7. That during my incarceration it was my duty and job while under duress and under the custody and control of the Japanese prison officials, to produce commercial products for the benefit of SEGA.

8. That I was further commanded and directed that if I did not fulfill the required labor for SEGA products then I would be subjected to physical beating and or loss of good time in addition to incarceration in solitary confinement and or other means of punishment.

9. That I was compelled to make, among other things, the following items for SEGA; to wit:

A) I was threatened, compelled and commanded to make electronic and other internal components for products which were in the nature of toys, games and other similarly related battery and electronic type items.

B) Upon finishing my specific task I passed on the abovesaid products to other prisoners for completion.

C) Upon completion I observed other prisoners packaging said products into cardboard boxes with the name SEGA in English imprinted on its side. These boxes were stacked for transit outside the prison and were eventually transported.

10. That similarly I along with other prisoners of many nationalities, including detainee's from Japan, were charged with the duty and responsibilities to make the aforesaid products for SEGA and I was forced to produce a great number of products under the most inhumane, threatening and cruel slave labor conditions imaginable.

11. That I was compelled under the abovesaid threats to work eight and a half hours per day, five and one half days per week during the period of my confinement producing the items described heretofore.

12. That in the furtherance of my compelled labor I was forced to abide by the daily schedule:

6:45 AM Wake up bell

6:55 AM Roll call. At this time, a prisoner must stand at military attention, completely silent and still, while he awaits a guard's command to speak his number in Japanese. If the prisoner makes a mistake or violates any of these rules, then that prisoner will be taken to investigation (kore shenabe) and then to chobatsu (punishment cell) for a minimum of one week. In the chobatsu cell a prisoner must sit on a hard wooden box, at attention, ankles and knees together, back arched, elbows in, palms flat on lap, staring at a white wall from 6:55 AM until 6:00 PM. During this time, a prisoner may not get out of this position for any reason. A bell sounds twice during this interval to allow the prisoner to use the toilet. Any violation of chobatsu rules will result in additional weeks in the punishment cell. All exercise is strictly prohibited in the chobatsu cell. Any refusal or further non-compliance with chobatsu rules will result in the use of "the harness". The harness is a belt that straps around the waist and holds the left hand in towards the stomach and the right wrist in towards the spine. A prisoner must eat, sleep and use the toilet while being bound in the



- harness. All chobatsu cells are in the solitary wing of Building 4 of Fuchu Prison.
- 7:00 AM Breakfast is served. Absolute silence is the rule. Once the meal is finished, the dishes must be washed clean regardless of whether there is any soap to clean them.
- 7:10 AM Breakfast is finished.
- 7:20 AM Prisoners are let out of their cells and must stand absolutely silent until a guard shouts the command "mawari migi" (about face). Groups of prisoners are then marched military style down the stairs where smaller groups join a long line of prisoners. The long line of prisoners is then marched to the factories. A prisoner may not make any mistake in his marching, may not even look in any other direction other than that of the head in front of him. Again, the rule is absolute silence.
- 7:40 AM Arrive at work. Once in the changing room, a prisoner is not permitted to talk or even to look at another prisoner. Talking at this time results in investigation and punishment.
- 7:50 AM Work begins. During work time a prisoner is not permitted to talk, look up, look around ("wakimi"), stand up or use the toilet without permission - permission is rarely granted. The guards say that they are there to watch us and not the other way around. Very serious punishments are given to those who wakimi or look at a guard.
- 8:45 AM Tea break. Approximately seven minutes to talk to other prisoners - if the guard is in a good mood. Often the breaks can be as short as four minutes or not at all.
- 9:50 AM Back to work.
- 12:00 PM Lunch. Absolute silence is required during all meals. Deviation from this rule will result in immediate chobatsu punishment for at least one week.
- 12:20 PM Lunch is finished. Back to work.
- 2:30 PM Tea break. Same amount of time as earlier tea break.
- 2:40 PM Back to work.
- 4:30 PM Work ends. To changing room. Absolute silence.
- 4:45 PM Prisoners are marched military style back to the cell block where the foreigners live in solitary isolation - ALL foreigners live in solitary isolation. The usual rules for marching apply now more than ever because the top brass come out to watch the marching.

- 5:00 PM Roll call. Same rules apply now as for the morning roll call.
- 5:10 PM Dinner is served. Dishes must be washed clean and collected by 5:40 PM.
- 6:00 PM At this time a bell chimes which means that it is permitted to unroll the prison supplied futon and a prisoner is then, for the first time that day, permitted to lay down on this thin mattress. At no time even during the coldest winter nights or days was my cell or the factory provided with any heat. A prisoner may use this time to write letters (two per month permitted), sew a button, read a book, etc. Also at this time the radio is played and is turned off at exactly 9:00 PM. 6:00 PM - 9:00 PM = ABSOLUTE SILENCE.
- 9:00 PM A bell rings at this time which means that a prisoner must be in a certain position on his back, silent and must not get up for any reason other than to use the toilet. Very severe punishments are given to those who violate room rules.

13. That in addition to the aforesaid I in fact was severely punished for not fulfilling the obligations expected of me by the Japanese prison authorities with respect to the production and completion of products as described above.

14. That in addition to the described chobatsu punishment, that I was subjected to as described above, the prison authorities decreased my daily food ration during this period.

15. That I continually lived in fear of punishment as I observed the guards beating prisoners and when this occurred all prisoners must either "migi mukai migi" or "hidari mukai hidari" (right face or left face) which means turning away from the action and then must "mega shiro" (close eyes) so as not to witness the beating which takes place - frequently with electrified, extendable metal poles.

16. In addition to the above I was paid the paltry sum of approximately three cents per hour for the compelled labor that I was forced to perform by the Japanese prison authorities on behalf of SEBA with respect to the products that I produced for them.

17. That I have not been properly compensated for my labor and if not for the threats of punishment, isolation, loss of good time, etc., I would not have agreed to perform the aforesaid labor that I have described for SEBA.

18. That all of the abovesaid is true and as accurate as I can recollect.

-----  
Christopher David Lavinger

Sworn to before me this  
12 day of July, 1993

-----  
Notary Public

3 9999 05982 021 5

United States Department of State

Washington, D.C. 20520

June 17, 1994



Dear Mr. Chairman:

I appreciated the opportunity to testify before you and Mr. Lantos on June 10. I would like to address a few issues that were raised at the hearing.

As I mentioned on June 10, although we have generally found that conditions in Japanese prisons do not violate human rights standards, the practices described by Mr. Lavinger go beyond what we were familiar with. We have faxed the testimony from the hearing to our Embassy in Tokyo and asked that they look into Mr. Lavinger's allegations. I will report to you when we receive the Embassy's analysis.

You expressed surprise that the Embassy's "Guidelines For Americans Arrested in Japan" contained a section that seemed to endorse the use of forced labor in Japan's prisons. I explained that the primary purpose of the booklet was to prepare Americans for what they might expect in Japanese prisons. Nonetheless, it is important that our publication not seem to endorse these practices. I have asked our Embassy in Tokyo to re-write that section so that American prisoners understand fully that we will try to be responsive to any complaints they might have about the prison labor system. As I stated at the hearing, Mr. Lavinger's complaints are the first of this nature we have received about the Japanese prison labor system.

I have also passed the testimony to my colleagues at the Customs Service so that they are fully aware of Mr. Lavinger's allegations regarding the possible export of prison labor goods to the United States. Customs officials at our Embassy in Tokyo have scheduled an appointment to visit the prison labor workshops at Fuchu Prison in late June. Either I or the Customs Service will communicate to you the results of that visit.

In response to your question about other international agreements that might apply in this case, we are unaware of any international agreements specifically concerning prison

The Honorable  
Gary Ackerman,  
House of Representatives.

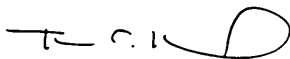
conditions, except in the law of war context. The Consular Convention and Protocol between the United States and Japan does not address prison conditions, nor does the Vienna Convention on Consular Relations, to which both the United States and Japan are a party.

Finally, you raised at the hearing the fact that the Japan section of the State Department's Human Rights Report for 1993 states that "there are no known cases of forced or compulsory labor" (p. 658). I explained that this followed the International Labor Organization (ILO) description of forced or compulsory labor, which specifically exempts labor performed as a result of a conviction in a court of law. You noted that the Report's section on China included prison labor in its description of forced labor, and wondered at the discrepancy. My colleagues inform me the reason prison labor is included in the Report's section on forced labor in China is two-fold. Some prisoners in China are there not as a result of a conviction in a court of law, but as a result of administrative punishment -- a type of punishment the ILO does not exempt from the ban on forced labor. Furthermore, some prisoners are incarcerated in China for political offenses we do not believe to be legitimate grounds for incarceration; this is not an issue with Japan.

I am pleased we had an opportunity to discuss this issue in detail. The State Department is committed to ensuring fair and humane treatment for American citizens imprisoned overseas. Toward that end, our consular officers in Japan visited Mr. Lavinger eleven times during his 15-month incarceration, starting the day after his arrest.

Please do not hesitate to contact me if I can be of any further assistance on this or any other matter.

Sincerely,



Thomas C. Hubbard  
Deputy Assistant Secretary  
Bureau of East Asian  
and Pacific Affairs

○

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